

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CIVIL ACTION NO. 20-cv-4728-MCA-MAH

EMERSON REDEVELOPERS URBAN )  
RENEWAL, LLC, )  
 ) DEPOSITION OF:  
Plaintiff, )  
 ) DANIELLE DI PAOLA  
v. )  
 )  
THE BOROUGH OF EMERSON, )  
NEW JERSEY, AND DANIELLE )  
DIPAOLA, )  
 )  
Defendants. )

---

TRANSCRIPT of the stenographic notes of  
the proceedings in the above-entitled matter as taken  
by and before MARY ANN ADAMS, a Certified Court  
Reporter and Notary Public of the State of New Jersey,  
held at the office of SILLS, CUMMIS & GROSS, P.C.,  
The Legal Center, One Riverfront Plaza, Newark, New  
Jersey, on Wednesday, April 26, 2023, commencing at  
10:12 a.m.

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19 KEVIN COWAN  
20  
21  
22  
23  
24  
25

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1 DANIELLE DI PAOLA, having been duly sworn by the  
2 Notary Public, testified as follows:

3 EXAMINATION BY MR. FIORENZO:

4 Q. Good morning, Ms. DiPaola. As you know,  
5 my name is Joe Fiorenzo, I'm with Sills, Cummis &  
6 Gross, and I represent Accurate Builders and Emerson  
7 Redevelopers in connection with a lawsuit that is  
8 pending in the Federal District Court entitled  
9 Emerson Redevelopers Urban Renewal, LLC versus  
10 Emerson and you. You're aware of the pendency of  
11 that lawsuit. Correct?

12 A. Yes.

13 Q. I know you've been deposed before 'cause  
14 you were deposed in another matter and I gave you  
15 instructions at that time. Do you remember those  
16 instructions?

17 A. Yes.

18 Q. Would you like me to -- you do.

19 A. Yes, verbal answers.

20 Q. Right. So I'm going to give you an  
21 instruction because it's important, 'cause we just  
22 had an issue. Let me fully complete my questions  
23 before you speak. We had a problem with that last  
24 time, so I'm going to again reiterate my  
25 instruction. Please allow me to fully complete the

1 question, don't anticipate as we do sometimes in  
2 normal conversation, and then once I've completed my  
3 question, then give me an answer. Okay?

4 A. Okay.

5 Q. Okay. The reporter will have great  
6 difficulty creating a clean record if we don't do  
7 that. Okay?

8 A. Okay.

9 Q. Great. Have you done anything to  
10 prepare for this deposition today?

11 A. I read the transcripts.

12 Q. Okay. Read the transcripts. So what  
13 transcript -- did you read the transcript of your  
14 deposition --

15 A. Yes.

16 Q. -- in the state case?

17 A. Yes.

18 Q. Okay. Other than reading the transcript  
19 of your deposition in the state case, what other  
20 transcript, if any, did you read?

21 A. None.

22 Q. Okay. Aside from reading the transcript  
23 of your deposition, did you do anything else to  
24 prepare?

25 A. Conferred with my lawyers.

1 Q. Okay. Putting aside any conversations  
2 you had with your lawyers, did you review any other  
3 documents of this mass of information that has been  
4 produced in all these different litigation matters,  
5 did you review anything?

6 A. Not particularly.

7 Q. I'm not sure what that means, not  
8 particularly. So in preparing, did you review  
9 anything at all, any of the many documents that  
10 exist in the record?

11 A. No.

12 Q. Okay. Did you speak to anyone in  
13 preparation for this deposition other than your  
14 lawyers?

15 A. No.

16 Q. Okay. For example, did you speak to  
17 your administrator, Mr. Hermansen?

18 A. No.

19 Q. Okay. As I understand it, you became a  
20 member of the governing body of the Borough of  
21 Emerson sometime in 2010, if memory serves me. Is  
22 that correct?

23 A. I believe so, yes.

24 Q. And at that time, you became a  
25 councilwoman?

1 A. Yes.

2 Q. Prior to that time, you had, as I recall  
3 it, some role in local Emerson government. Is that  
4 true?

5 A. Yes.

6 Q. You were on a board or two if I  
7 remember?

8 A. Yes.

9 Q. What boards were you on prior to 2010?

10 A. The Land Use Board and the Environmental  
11 Commission.

12 Q. Okay. So when did you begin your  
13 service on the Land Use Board?

14 A. I believe three years before that, three  
15 and a half years.

16 Q. So in 2007 or thereabouts?

17 A. About then.

18 Q. And the other was the Environmental  
19 Board?

20 A. Correct.

21 Q. Is the Environmental Board --

22 A. It's a commission.

23 Q. Commission. Is that a commission whose  
24 members are appointed by the mayor, the governing  
25 body, who appoints to that?



1 A. The mayor.

2 Q. And how many members were there on the  
3 Environmental Commission when you sat on it?

4 A. I don't recall.

5 Q. And when were you on the Environmental  
6 Commission?

7 A. I don't recall.

8 Q. Prior to you being on the governing  
9 body. Correct?

10 A. Correct.

11 Q. Was it before or after you were on the  
12 Land Use Board?

13 A. It ran simultaneously.

14 Q. Okay. And what was the function of the  
15 Environmental Commission?

16 A. To make decisions as it related to the  
17 environment for the betterment of Emerson.

18 Q. Well, explain to me what that means.  
19 Give me an example of the environmental decisions  
20 that the local government would make for the  
21 betterment of Emerson. Can you give me an example?

22 A. We worked with the school and saved  
23 plastic caps in order to recycle. We did cleanups.  
24 We did a tour of the Emerson woods.

25 Q. Okay. Anything else you can remember?

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1 A. I don't recall anything else.

2 Q. You're familiar that at the state level,  
3 there is a Department of Environmental Protection  
4 that exists. Correct?

5 A. Yes.

6 Q. So your local commission didn't perform  
7 any of the functions of the DEP. Correct?

8 MR. SEAMAN: Objection to form. You can  
9 answer.

10 A. No.

11 Q. No, you did not.

12 A. No.

13 Q. 'Cause I asked if that was correct and  
14 you said no. So it's a double negative. So I just  
15 want the record to be clear. So they did not  
16 perform any of the functions of the State Department  
17 of Environmental Protection. Correct?

18 A. No.

19 Q. Meaning yes, they didn't?

20 A. We did not.

21 Q. Okay. Thank you.

22 What do you understand the NJDEP to be?

23 A. New Jersey Environmental Protection  
24 Agency.

25 Q. What do you understand their function at

1 the state level to be?

2 A. Make sure the environment is okay in  
3 New Jersey.

4 Q. Do you have any knowledge or expertise  
5 of the functions that the DEP performs?

6 A. No.

7 Q. Do you know whether the DEP has the  
8 exclusive jurisdiction to deal with things like  
9 environmental contamination in the state?

10 A. I believe they do.

11 Q. Okay. You understand then that the  
12 issue of environmental contamination is a state  
13 issue that's dealt with by the DEP, not a local  
14 issue to be dealt with by Emerson. Correct?

15 MR. BOTTA: Objection to the form. You  
16 can answer.

17 Q. You can answer.

18 A. I think that's slightly incorrect,  
19 because I think the first people on the scene are  
20 the local fire department, police, emergency  
21 services, OEM, and then the DEP is called in if  
22 there's a problem.

23 Q. Well, okay. DEP deals with -- I'm  
24 asking about environmental contamination. If  
25 there's an environmental contamination issue, that

1 is an issue that falls within the jurisdiction of  
2 the DEP to deal with whether a cleanup is required  
3 or not. Correct?

4 MR. BOTTA: Objection, calls for a legal  
5 conclusion.

6 A. I guess. I don't know.

7 Q. To your knowledge --

8 A. I don't know.

9 Q. To your knowledge, as a member of the  
10 governing body and as a mayor, did you understand  
11 that the DEP had responsibility for dealing with  
12 issues concerning whether there was an environmental  
13 contamination and what would be done to remediate  
14 it, do you understand it was their function to deal  
15 with that?

16 A. I don't know.

17 Q. No idea.

18 A. No.

19 Q. So even when you were the mayor, you had  
20 no knowledge of the interrelationship between the  
21 DEP and the Borough of Emerson as to environmental  
22 contamination, you had no knowledge of that? Is  
23 that a no? You had no knowledge?

24 MR. BOTTA: Let her answer.

25 MR. FIORENZO: Yeah. She was shaking

1 her head.

2 A. I don't -- I don't know.

3 Q. You don't know.

4 A. I don't know the functions of the DEP  
5 completely.

6 Q. And you never communicated with the DEP?

7 A. I don't recall.

8 Q. Did you ever inquire of the DEP as to  
9 the status on any environmental contamination at the  
10 site by any of the properties in Emerson?

11 MR. BOTTA: Objection. What site?

12 Q. Any site. Any property in Emerson.

13 A. I don't recall.

14 Q. Did Emerson, while you were the mayor,  
15 and let me focus on the period from 2019 and I'll  
16 take it through today, did Emerson have any sites  
17 within the town that are the subject of an  
18 environmental cleanup?

19 A. Yes.

20 Q. How many?

21 A. Three or four that I know of, I believe.

22 Q. Okay. And as to those sites, is the DEP  
23 the agency responsible for overseeing and approving  
24 any remediation of the sites to your knowledge?

25 A. Yes.

1 Q. Okay. Not Emerson. Correct? Not the  
2 local community. Correct?

3 A. I don't really understand your question.

4 Q. Well, the local community doesn't decide  
5 what cleanup plan should be implemented. The DEP  
6 does that. Correct?

7 A. Yes.

8 Q. And the local community doesn't decide  
9 whether the property is clean or not, that's a  
10 determination made by the DEP. Correct?

11 A. As I understand it, yes.

12 Q. In fact, Emerson doesn't even have an  
13 environmental engineer who's employed by the town.  
14 Correct?

15 A. I don't recall.

16 Q. Today, you don't have an environmental  
17 engineer that's employed by the town. Correct?

18 A. We employ an engineering firm and they  
19 may have an environmental engineer on their staff  
20 that the Borough has access to.

21 Q. Right. That may well be true. I'm  
22 asking whether the Borough has specifically employed  
23 an environmental engineer for the purpose of  
24 assisting them on an annual basis.

25 A. No.

1 Q. Okay. On those sites where you say  
2 there is cleanup activity, that's being overseen by  
3 the DEP. Correct?

4 A. Yes.

5 Q. On those sites, do you keep yourself  
6 apprised of the status of the cleanup activity?

7 MR. SEAMAN: Objection to form.

8 A. Only if they contact us.

9 Q. Only if who contacts you?

10 A. The DEP.

11 Q. Okay. So you basically let the DEP  
12 handle that unless they contact you?

13 A. I don't know how to answer your  
14 question.

15 Q. Well, you told me a moment ago that you  
16 don't --

17 MR. FIORENZO: I'm sorry, read back that  
18 last answer. I just want to make sure I have it  
19 correctly.

20 (The record is read by the reporter.)

21 Q. And then you said only if the DEP  
22 contacts you do you keep yourself apprised of the  
23 status of the cleanup. Is that what you just told  
24 us? Correct?

25 A. I don't recall. I don't know.

1           Q.       You said -- I asked you if you kept  
2       yourself apprised. You said, I'm only apprised if  
3       the DEP lets us know what's going on. That's what  
4       you just told us. Correct?

5           A.       I did. However, there are times where  
6       there are complaints that come into Borough Hall and  
7       then we refer them to the DEP.

8           Q.       Sure. With that exception where a  
9       complaint comes in and you refer it over, you don't  
10      generally keep yourself apprised, you're only  
11      apprised of the cleanup activity if the DEP lets you  
12      know what's going on. Correct?

13          A.       No, I would follow up to see if  
14      something was cleaned up and whether it was safe in  
15      my town.

16          Q.       Oh, so you do monitor it then, you do  
17      monitor the cleanup activities at the sites?

18                  MR. SEAMAN: Objection to form.

19          A.       Not on a regular basis.

20          Q.       Well, on an irregular basis do you?

21          A.       If a problem arises, I like to see it  
22      through to make sure that it is completed.

23          Q.       Well, if there is no problem, if there's  
24      just a cleanup plan submitted to the DEP and the DEP  
25      is overseeing it, would you keep yourself apprised



1 of that or do you wait for the DEP to let you know  
2 what's going on?

3 A. It depends on the circumstance.

4 Q. What circumstance would it depend on?

5 A. On whether I know about it or whether I  
6 don't know about it.

7 Q. Well, I thought you told me you keep  
8 yourself apprised of the cleanup sites in town.

9 A. That I know of.

10 MR. SEAMAN: Objection to form.

11 Q. So of the ones you know of, do you in  
12 that instance keep yourself apprised of what's going  
13 on at the site as to the cleanup activity or not?

14 A. I attempt to stay apprised of what's  
15 going on.

16 Q. And how do you do that?

17 A. I would generally ask the administrator  
18 to make sure that something was taken care of.

19 Q. Okay. And anything else you would do to  
20 keep yourself apprised of what's going on other than  
21 asking the administrator to -- to do what? I'm  
22 sorry. What would you ask the administrator to do?

23 A. Just to look into something to see if it  
24 was satisfied, if it was complete.

25 Q. And do you do that as a matter of

1 ordinary course?

2 A. No.

3 Q. Okay. So, again, what's the criteria  
4 that you would use to determine whether to do that  
5 or not, whether to contact the business  
6 administrator -- or the town administrator?

7 A. Say your question again?

8 Q. What are the criteria then you would use  
9 to ask the administrator or not to monitor what's  
10 going on and report back to you?

11 MR. SEAMAN: Objection to form.

12 A. I don't particularly have criteria. If  
13 somebody asks me about something, I will inquire for  
14 the administrator to look into something.

15 Q. So then only if someone asks you about  
16 it will you inquire of the administrator?

17 A. Or if there is an application before the  
18 Land Use Board and a member of the public comes in  
19 and says that they believe that there's an issue  
20 with the property, we might have them look into it.

21 Q. Okay. Have you done that?

22 A. I don't recall.

23 Q. Have you been in front of the Land Use  
24 Board where someone raised an issue regarding  
25 environmental contamination?

1 A. I think so, yeah.

2 Q. When? When was the last time?

3 A. I don't recall.

4 Q. Did that happen with regard to the site  
5 owned by Emerson Redevelopers?

6 A. I believe it did.

7 Q. And that was at the Planning Board?

8 A. Yes.

9 Q. Okay. So someone came before the  
10 Planning Board and raised an issue about  
11 contamination?

12 A. Yes.

13 Q. Who was that? Was that you?

14 A. No, I believe it was Lorraine McQueeney.

15 Q. Was it you as well?

16 A. I don't recall.

17 Q. When you appeared before that board when  
18 they were --

19 A. I don't --

20 Q. Let me finish.

21 -- when they were considering the application,  
22 did you raise an issue about environmental  
23 contamination at the site?

24 A. It was a long time ago. I don't recall.

25 Q. I might be able to help you with that in

1 a minute or two.

2 Okay. So you -- over a period of years, you  
3 were asked to consider and vote on various  
4 ordinances and resolutions that relate to the  
5 subject property. And when I say the subject  
6 property, I'm referring to Block 419, I'll use as a  
7 shorthand expression for the Emerson redevelopment  
8 project. So when I say that, that's what I'm  
9 referring to. Okay?

10 A. Yes.

11 Q. Okay. So over the years, you were asked  
12 to consider and vote upon various resolutions and  
13 ordinances relating to the subject property.  
14 Correct?

15 A. Correct.

16 Q. And when you considered those issues and  
17 voted on those issues, were you aware at the time  
18 that Emerson had been engaged in litigation for many  
19 years over issues concerning affordable housing,  
20 were you aware of that?

21 A. I became aware.

22 Q. Okay. So when you were voting on those  
23 various matters at that time, you were aware, were  
24 you not?

25 A. I don't recall.

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1           Q.       Were you aware that as far back as 2001,  
2       there was a decision rendered by Judge Harris  
3       relating to Emerson's noncompliance with its  
4       constitutional obligations under Mount Laurel, were  
5       you aware that Judge Harris rendered a decision?

6           A.       At what point was I aware?

7           Q.       Well, were you aware of it at the time  
8       you were on the governing body?

9           A.       I don't recall.

10          Q.       Were you aware of it at the time you  
11       were on the Land Use Board?

12          A.       I don't recall.

13                 MR. FIORENZO: Pull up the decision,  
14       please. Let's mark it.

15                 MR. KLEIN: DD-1.

16          Q.       DD-1.

17                 MR. BOTTA: DD-1?

18                 MR. FIORENZO: DD.

19                 MR. BOTTA: Got you.

20                 MR. FIORENZO: That's going to be our  
21       markings for today.

22          Q.       So back in 2001, Judge Harris rendered a  
23       49-page decision involving litigation brought  
24       against Emerson for its failure to comply with its  
25       constitutional obligation. So when did you become

1 aware of the Judge Harris decision?

2 A. I don't recall.

3 Q. No idea?

4 A. I don't recall.

5 Q. Okay. Well, were you aware of it when  
6 you voted on the redevelopment plan for the subject  
7 site?

8 A. I don't recall.

9 Q. Okay. So in his decision, Judge Harris  
10 stated, "Emerson, New Jersey, persists as a bastion  
11 of exclusionary zoning. It has steadfastly resisted  
12 taking affirmative steps to provide realistic  
13 opportunities for affordable housing within its  
14 borders. It has further failed to enact the  
15 necessary legislation to authorize the expenditure  
16 of its considerable affordable housing trust funds  
17 for regional and local housing needs."

18 Were you aware of that finding by Judge  
19 Harris?

20 MR. SEAMAN: Objection to form.

21 A. I don't recall.

22 Q. Well, do you remember on the Emerson  
23 website that former Mayor Lou Lamatina had a series  
24 of messages to the town that were posted which, in  
25 fact, related to the members of the community the

1 Judge Harris ruling, do you remember that?

2 A. I recall telling you that I didn't read  
3 them.

4 Q. Well, yeah, in another deposition. But  
5 this is a new day and it's a new case, so I've got  
6 to ask. There may be some overlap and I apologize  
7 for that because it's a different matter.

8 So your answer is that you didn't read them,  
9 those postings by the mayor which were describing  
10 the Mount Laurel history of Emerson. Correct?

11 A. Correct, I did not read them.

12 Q. And you didn't read them because I think  
13 you described them under oath as propaganda. Right?

14 A. I believe I said that.

15 Q. Yeah. And even though it was quoting  
16 from various legal rulings to try to explain to the  
17 public the circumstance Emerson found itself in, you  
18 didn't take it upon yourself to even bother reading  
19 it 'cause you couldn't believe anything Mr. Lamatina  
20 wrote. Correct?

21 MR. SEAMAN: Objection to form.

22 A. Correct.

23 Q. Okay. So you weren't aware that Judge  
24 Harris ruled, again, in the first paragraph, "The  
25 time has come to end this constitutional breakdown.

1 The New Jersey constitution shall not be permitted  
2 to merely remain a vague rumor in Emerson." You  
3 weren't aware that the judge made that finding  
4 either. Correct?

5 MR. SEAMAN: Objection to form.

6 A. I don't recall when I was aware of that.

7 Q. Were you aware --

8 MR. FIORENZO: Scroll over, Steve, to  
9 the next page. If you could just highlight. Yeah,  
10 right there. Just blow it up.

11 Q. So were you aware, however, that Judge  
12 Harris says -- he ruled, "Although I conclude that  
13 the builder's remedy is not warranted, Emerson shall  
14 be required without delay to adopt all affirmative  
15 measures, including meaningful legislation and  
16 adequate appropriations, recommended or made  
17 necessary by the Special Master, in order to fulfill  
18 its constitutional obligation to provide shelter  
19 opportunities for the beneficiary class of unhoused  
20 poor."

21 So did you become aware at some point in time  
22 that Judge Harris said the time had come for Emerson  
23 to come forward without delay to do the things  
24 needed to be done to fulfill its constitutional  
25 obligation, were you aware of that at some point?



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1 A. At some point.

2 Q. Okay. You just don't know when.

3 A. I don't recall.

4 Q. Okay. I want to ask you again regarding  
5 this ruling back in 2001. Judge Harris on page 18  
6 of this ruling also ordered Emerson to provide a  
7 "compliant Housing Element and Fair Share Plan by  
8 March 30, 2001. As revealed during trial, it has  
9 woefully failed to comply. The planning document  
10 that Emerson seeks to pass off as Mount Laurel II  
11 compliant is riddled with regulatory deficiencies,  
12 substantive errors, and rank speculation.  
13 Accordingly, I conclude I must invoke the  
14 exceptional affirmative remedies of the type  
15 outlined in Mount Laurel II and require Emerson to  
16 adopt specific amendments to its zoning ordinance  
17 and other land use regulations as will enable it to  
18 finally meet its Mount Laurel II obligations."

19 Were you aware that Judge Harris made such  
20 findings?

21 MR. SEAMAN: Objection to form.

22 A. I don't recall.

23 Q. Do you know what a housing element plan  
24 is?

25 A. Yes.

1 Q. What is it?

2 A. It's a plan of the housing stock in  
3 Emerson or in any municipality and a plan for the  
4 future.

5 Q. Do you know what a fair share plan is?

6 A. It's a plan for fair share housing, for  
7 affordable housing.

8 Q. Okay. And you understand every  
9 municipality has to have one?

10 A. Yes.

11 Q. Okay. And the judge is ordering Emerson  
12 to move forward swiftly to satisfy these  
13 constitutional deficiencies. Correct?

14 MR. SEAMAN: Objection to form.

15 A. If you say so.

16 Q. I'm asking you. I don't say anything.  
17 I'm asking questions. Did you understand that the  
18 judge was ordering Emerson to move forward to create  
19 a compliant housing element and fair share plan by a  
20 certain date?

21 MR. SEAMAN: Objection to form.

22 A. I don't recall. I wasn't aware of that  
23 in 2001. I don't recall.

24 Q. So you weren't aware that the -- I'm not  
25 asking in 2001. At some point in time were you

1 aware of it when you got on the governing body, for  
2 example, and there were issues of Mount Laurel that  
3 were being discussed, were you aware of it then?

4 A. I don't know when I became aware of it.

5 Q. Okay. But you were aware of it at some  
6 point. Correct?

7 A. At some point, but I don't recall when.

8 Q. Because ultimately Emerson filed a  
9 lawsuit to try to get protection from further  
10 builder's remedy lawsuits and to invoke the court to  
11 help them get that protection. Correct?

12 A. Correct.

13 Q. Okay. So now, with this then as a  
14 backdrop, did you understand the Court had appointed  
15 a Special Master?

16 A. I don't recall.

17 Q. Do you know what a Special Master is?

18 A. I think I have a brief understanding of  
19 it.

20 Q. Well, is there a Special Master that  
21 exists as we sit here today relating to Emerson's  
22 compliance with its Mount Laurel obligations?

23 A. Yes.

24 Q. Who is that?

25 A. Mary Beth Lonergan.

1 Q. Right. There has been a Special Master  
2 now for a very long period of time since Judge  
3 Harris entered his ruling. Correct?

4 A. I don't recall.

5 Q. There was a Special Master back in 2010  
6 when you became a member of the governing body. You  
7 were aware of that, weren't you?

8 A. I don't recall.

9 Q. Is there any way you wouldn't have been  
10 aware of that as a member of the governing body who  
11 had to deal --

12 A. I don't recall.

13 Q. Let me finish.

14 -- who had to deal with these issues?

15 MR. SEAMAN: Objection to form.

16 A. I don't recall.

17 Q. That's something you would want to make  
18 yourself aware of. Correct?

19 MR. SEAMAN: Objection to form.

20 Q. What the constitutional Mount Laurel  
21 obligations of your community were, you'd want to  
22 know that, wouldn't you?

23 MR. SEAMAN: Objection to form.

24 A. I don't recall.

25 Q. No, I just asked, that's something you

1 would want to know, isn't it?

2 A. I don't recall when I understood all of  
3 that.

4 Q. That's not my question though. Is that  
5 something you would want to know what obligations  
6 your town had to fulfill its Mount Laurel  
7 obligation, is that -- as a member of the governing  
8 body is that something you would want to know?

9 MR. SEAMAN: Objection to form.

10 A. I can't tell you what I wanted to know  
11 13 years ago.

12 Q. Well, tell me today. Do you want to  
13 know it today? Today.

14 A. Do I want to know what?

15 Q. What Emerson's constitutional affordable  
16 housing obligations are, do you want to know about  
17 that today?

18 A. Of course.

19 Q. Okay. So you certainly would have  
20 wanted to know about it back then when you got on  
21 the governing body. Correct?

22 MR. SEAMAN: Objection to form.

23 A. I don't recall if I --

24 Q. Because you took an oath, didn't you?

25 MR. BOTTA: You've got to let her

1 finish. If she's going to let you finish your  
2 question, she's got to finish her answer.

3 Q. You took an oath. Right? When you were  
4 sworn in?

5 A. Yes.

6 Q. And that oath was to uphold and defend  
7 the constitution and laws of the state of  
8 New Jersey. Right?

9 A. Correct.

10 Q. And if Emerson wasn't compliant with its  
11 constitutional obligations, consistent with the oath  
12 you took, you would want to know that, wouldn't you?

13 MR. SEAMAN: Objection to form.

14 A. I believe you're asking me for what my  
15 mindset was back when I took an oath and I don't  
16 recall.

17 Q. I'm asking you generally now. Forget  
18 about -- that's something you would want to know,  
19 isn't it?

20 MR. SEAMAN: Objection.

21 Q. You would need to know as a member of  
22 the governing body. Right?

23 MR. SEAMAN: Objection to form.

24 A. I would rely on attorneys to explain to  
25 me what I needed to know and what I didn't.

1           Q.       Right. So let me make it simple. Do  
2       you deny here today under oath that back in 2010  
3       when you became a member of the governing body that  
4       you didn't make yourself aware through whatever  
5       means, reading, speaking to lawyers, or whatever, of  
6       what Emerson's constitutional Mount Laurel  
7       obligations were at that time, do you deny making  
8       yourself aware of that at that time? Yes or no?

9           MR. SEAMAN: Objection to form.

10          A.       That's a long question. You'll have to  
11       ask shorter ones.

12          Q.       Well, no. You don't tell me what I have  
13       to do.

14          A.       I don't understand your question.

15          Q.       What don't you understand about it?

16          A.       I lost you at like the fifth word.

17          Q.       Okay. Let me have it repeated, and if  
18       there's a deficiency, if there's something you don't  
19       understand, I'm happy to rephrase it.

20          A.       I don't have a deficiency.

21          Q.       There's a deficiency in my question. If  
22       you don't understand my question, tell me what in  
23       there is confusing and I'll try to rephrase it.

24                 MR. FIORENZO: Could you read it back to  
25       her?

1 Q. I thought it was pretty clear.

2 (The record is read by the reporter.)

3 A. I don't recall.

4 Q. Did you care?

5 A. I don't recall.

6 Q. You don't recall if you cared?

7 A. I can't tell you what my mindset was all  
8 those years ago.

9 Q. So the answer is you don't recall if you  
10 cared what the constitutional obligation of Emerson  
11 was, is that your answer?

12 A. I don't recall.

13 Q. You don't recall if you cared, 'cause  
14 that's the only question, did you care, and you said  
15 I don't remember. So you don't remember if you  
16 cared?

17 A. I don't remember.

18 Q. Okay. So now, after this happens in  
19 court and Emerson is being, my words, chastised by  
20 the Court as a bastion --

21 MR. BOTTA: 2001?

22 MR. FIORENZO: Yeah, 2001, the decision.

23 Q. -- a bastion of exclusionary zoning, do  
24 you know what actions, if any, they took after that  
25 to remediate these problems?



1 A. I don't remember.

2 Q. Do you know what actions, if any, they  
3 took when you got on in 2010 to address and  
4 remediate these problems?

5 A. I don't remember.

6 Q. Do you recall that there was a  
7 resolution adopted by the governing body in 2016 --  
8 actually, withdraw that.

9 MR. KLEIN: DD-2.

10 Q. Okay. So were you aware that in 2006,  
11 Emerson prepared a redevelopment plan?

12 MR. SEAMAN: Objection to form. Was she  
13 aware in 2006 or was she aware --

14 MR. FIORENZO: I'm sorry, we should mark  
15 that.

16 A. I was thinking the same thing. I don't  
17 know when I became aware, but I'm aware of that  
18 plan.

19 MR. FIORENZO: Just mark it as DD-2.

20 Q. So you don't know when you became aware  
21 of this, but at some point in time you did?

22 A. Like I said, I don't remember when I  
23 became aware, but I'm aware of the plan.

24 Q. So when you got on the governing body in  
25 2010, did you attempt to educate yourself on the

1 important issues relating to Emerson?

2 A. I think after 2006 I was on the Land Use  
3 Board and then I knew that there was a redevelopment  
4 plan that was put in place.

5 Q. Okay. Great. So you're familiar with  
6 this plan?

7 A. I have not reviewed it in a very --

8 Q. Or were at the time way back when.

9 A. I think I may have been aware of certain  
10 segments of it but not the full plan.

11 Q. And do you recall that this  
12 redevelopment plan was prepared --

13 MR. SEAMAN: Joe.

14 MR. BOTTA: Please let her finish.  
15 She's finishing and you're starting.

16 MR. FIORENZO: Okay. I thought she was  
17 done.

18 Q. Something else you want to say?

19 A. No, you can continue.

20 Q. Okay.

21 MR. BOTTA: You're just overlapping and  
22 that's not good for the record.

23 MR. FIORENZO: Okay.

24 THE WITNESS: Thank you.

25 Q. Do you know if this was done in an

1 effort to try to address the issues raised by Judge  
2 Harris in his ruling?

3 A. I don't recall.

4 MR. FIORENZO: Pull up page 5, please.

5 Q. So whenever you became aware of this,  
6 either sitting on the Zoning Board or when you came  
7 on the governing body, were you aware that this  
8 redevelopment plan intended to create a provision  
9 for affordable housing under the Fair Housing Act?

10 A. I can read that. That's what it says.

11 Q. Were you aware of that when you reviewed  
12 this?

13 A. I don't recall what I was aware of back  
14 then.

15 Q. So did you ever become aware that the  
16 redevelopment plan created by Emerson was intended  
17 to address the issue of affordable housing, did you  
18 ever know that?

19 A. At some point, yes, I was aware.

20 Q. Okay. You sat on the Land Use Board.  
21 Right?

22 A. Correct.

23 Q. Did that plan go before the Land Use  
24 Board?

25 A. I believe it did.

1           Q.       Okay. So you would have heard a  
2 presentation from Mr. Burgis, Joe Burgis, the  
3 planner, regarding this. Correct?

4           A.       I guess.

5           Q.       And you were made aware at that time  
6 that this redevelopment plan was created in part to  
7 try to address the problems that were identified by  
8 Judge Harris so that Emerson was in compliance with  
9 its obligation. You were aware of that from the  
10 presentation that was made as you sat on the board.  
11 Correct?

12          A.       I don't recall.

13          Q.       Okay. You don't deny that though, do  
14 you?

15                   MR. SEAMAN: Objection to form.

16          A.       I don't recall.

17          Q.       But you don't deny it.

18          A.       Deny what?

19          Q.       I understand you don't recall. So that  
20 means maybe yes, maybe no. You don't deny that that  
21 was the reason for this plan was to address, in  
22 part, affordable housing. Right?

23          A.       In part.

24          Q.       Okay.

25          A.       I believe a portion of it was

1 regentrification of Emerson.

2 Q. Sure. And if you read the highlighted  
3 provisions, it talks about all development within  
4 the designated redevelopment area shall provide for  
5 the appropriate number of affordable dwellings. The  
6 number of affordable dwellings shall be provided  
7 pursuant to the State of New Jersey Council on  
8 Affordable Housing third round rules that mandate a  
9 minimum of one affordable housing unit for every  
10 eight units of market rate housing and one  
11 affordable housing unit for every twenty-five jobs  
12 created. The redevelopment plan encourages the use  
13 of age-restricted housing, and then it goes on.

14 So this was the plan adopted by Emerson  
15 sometime back in 2006. Correct?

16 A. Yes.

17 Q. Are you -- do you know what the COAH  
18 third round rules mean, do you know what that refers  
19 to?

20 A. The number of units that each  
21 municipality has to build.

22 Q. Right. And COAH would determine that  
23 based on their third round rules. They had numbers  
24 which they ascribed to each municipality. Right?

25 A. Yes.

1           Q.       Okay. So Emerson now in adopting this  
2 plan is recognizing their obligation to address  
3 their affordable housing obligation. True?

4           A.       I guess.

5           Q.       You guess? Is there any doubt in your  
6 mind?

7           A.       Like I said, I think it was also just to  
8 redo the downtown so it would look nicer.

9           Q.       Well, may, but it certainly was  
10 designed, in part, to address Emerson's affordable  
11 housing obligation.

12          A.       Yes, in part.

13          Q.       Okay. Did you vote on this -- approval  
14 of this plan?

15          A.       I don't recall.

16          Q.       Did you support the plan as presented?

17          A.       I don't recall.

18          Q.       Ultimately the redevelopment plan was  
19 adopted. Correct?

20          A.       Yes.

21          Q.       And when it was adopted then, it now  
22 presented an opportunity for Emerson to try to  
23 address their affordable housing obligation through  
24 the creation of these redevelopment areas. Correct?

25          A.       Yes.

1 Q. Okay. And at some point did the Mayor  
2 and Council approve a redevelopment agreement?

3 A. I don't recall.

4 MR. FIORENZO: Steve, pull up -- yeah.

5 A. I mean, seventeen years ago?

6 Q. No. No. I'll show it to you. Let me  
7 see if I can help you, make it easier?

8 MR. KLEIN: DD-3.

9 A. Oh, yes.

10 Q. Okay. So at some point there was a  
11 redevelopment agreement created entered into by the  
12 town between the Borough of Emerson and Emerson  
13 Redevelopers Urban Renewal, LLC, and this agreement  
14 DD-3 is dated June 27, '16. Do you see that?

15 A. Yes.

16 Q. And you're aware of this agreement.  
17 Correct?

18 A. Yes.

19 Q. This agreement was intended as it says  
20 in the body of the document, I'm happy to show you  
21 whatever you want, in part, to address a portion of  
22 Emerson's affordable housing obligation. Correct?

23 A. I believe that was the intent.

24 Q. Okay. You voted against approval of  
25 this redevelopment agreement. Correct?

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1 A. Did I?

2 Q. Did you?

3 A. I don't recall. Do you have the vote?

4 Q. Well, you don't remember what your  
5 position was regarding this?

6 A. I don't recall if I abstained or if I  
7 voted no.

8 MR. FIORENZO: Okay. Mark that, please.

9 MR. KLEIN: This is DD-4.

10 Q. Okay. DD-4 is a resolution of the  
11 Borough of Emerson, Resolution No. 256-16, and the  
12 subject is "Authorizing" --

13 MR. KLEIN: I'm sorry.

14 MR. FIORENZO: That's okay.

15 MR. KLEIN: DD-4.

16 MR. FIORENZO: This will be DD-4, the  
17 resolution.

18 Q. So this redevelopment agreement which  
19 was intended to try to address the affordable  
20 housing obligation as you noted a moment ago, the  
21 subject is "Authorizing the Execution of a First  
22 Amendment" --

23 MR. FIORENZO: Yeah, but I wanted the  
24 original. I'm sorry, we're doing it out of  
25 sequence. Go back to this one, E293. That's the



1 First Amendment. We skipped over the original.

2 Okay.

3 MR. KLEIN: This will be DD-5.

4 Q. All right. DD-5 are minutes of the  
5 Emerson Mayor and Council, June 14, 2016.

6 Could you go to that section where they vote  
7 on this. Okay. Just pull it up. So just make it a  
8 little bigger.

9 So there's a motion made at that time to  
10 approve the consent agenda item number 173-16,  
11 approval of the execution of the redevelopment  
12 agreement only was moved and seconded, and then it  
13 shows with respect to this one you appeared to have  
14 abstained. Correct?

15 A. Correct. I told you I didn't remember.

16 Q. So is there some reason why you didn't  
17 vote in favor of it since it was intended to fulfill  
18 the obligation of Emerson noted by the Court  
19 concerning its affordable housing obligation? What  
20 was your reason for not voting in favor?

21 MR. SEAMAN: Objection to form.

22 MR. BOTTA: Objection to the form. Can  
23 you just ask her why she didn't vote in favor?

24 MR. FIORENZO: No, I'll stay with my  
25 question, thank you.

1           A.           Generally when I abstain, it's because I  
2           need more information.

3           Q.           Well, I'm not asking generally. Why  
4           didn't you vote in favor of the redevelopment  
5           agreement here?

6           A.           I don't remember.

7           Q.           Okay. You told us a moment ago this  
8           agreement was intended to address the affordable  
9           housing problem that Emerson had. Correct?

10          A.           Correct.

11          Q.           So as you sit here today, can you think  
12          of any reason why you would not have voted in favor  
13          of that?

14                      MR. SEAMAN: Objection to form.

15          A.           I already said I generally needed more  
16          information if I abstain.

17          Q.           No, no, but I'm not asking generally  
18          what you do. I'm asking --

19          A.           I don't recall --

20          Q.           Let me finish.

21          A.           -- on that day why I abstained.

22          Q.           In this instance, as to this resolution,  
23          can you tell us why you didn't vote to support it,  
24          is there any reason you can think of?

25          A.           Can I see the full -- can you get rid of

1 the box and can I see the full page?

2 Q. Sure.

3 A. I probably needed more information.

4 MR. SEAMAN: Can we just confirm that's  
5 the full consent agenda? It doesn't --

6 A. It's not. Those are the items that were  
7 pulled off.

8 MR. FIORENZO: No, it's the minutes.

9 MR. SEAMAN: I understand.

10 MR. FIORENZO: It's not the consent  
11 agenda. They're the minutes of the actual  
12 meeting --

13 MR. SEAMAN: Yes.

14 MR. FIORENZO: -- prepared by the clerk.

15 MR. SEAMAN: And can we confirm that  
16 that is the minutes of all the items that were on  
17 the consent agenda on that page or does it continue  
18 on the next page? That's my question.

19 MR. FIORENZO: It's the minutes.

20 MR. SEAMAN: Is there a second page? Is  
21 there a page following this page?

22 MR. FIORENZO: Steve, show him the whole  
23 thing.

24 A. That's the full consent.

25 You're laughing. I don't recall making a

1 joke.

2 Q. Well, I'm just laughing at the comment  
3 you just made loud enough for me to hear that you  
4 can't believe I'm asking you these questions.

5 A. That's not what I said.

6 Q. Oh, okay.

7 A. That's absolutely not what I said.

8 Q. That's good. I'm happy to hear that.

9 MR. SEAMAN: Glad it was loud enough for  
10 you to hear, Joe.

11 MR. FIORENZO: Yeah, I'm getting old.

12 A. That's not what I said.

13 MR. FIORENZO: I'm getting old. My  
14 hearing's bad, I'll concede that.

15 Q. Here's a copy, so we have that.

16 MR. SEAMAN: That wasn't what she said.

17 MR. FIORENZO: All right.

18 MR. SEAMAN: Mayor, I'm going to ask you  
19 to take your time and review the entire document and  
20 let Mr. Fiorenzo know when you're ready.

21 MR. FIORENZO: I don't have any other  
22 questions on the document. I'm done. So, you know,  
23 I'm just giving it to you because she was asking to  
24 see the whole thing and I've given it. But I have  
25 my answer to the question. So as far as I'm

1 concerned, I'm ready to move on.

2 MR. SEAMAN: Okay. Then we can move on.

3 A. Okay.

4 MR. FIORENZO: Okay. So let's go back,  
5 Steve, to the resolution on the First Amendment.  
6 That's the one we marked. That was 4?

7 MR. KLEIN: It was 4.

8 Q. So then after the redevelopment  
9 agreement gets executed by the Borough to address  
10 affordable housing, there then was -- you're aware  
11 there was a First Amendment to the redevelopment  
12 agreement?

13 A. Yes.

14 Q. Okay. And that was also voted on.  
15 Correct?

16 A. Yes.

17 Q. And you voted against execution of the  
18 First Amendment. Correct?

19 A. Correct.

20 Q. Why?

21 A. Because I was against it.

22 Q. Why?

23 A. I don't recall right this second.

24 Q. Is there any reason why that you can  
25 think of as you sit here today that you were against

1 the First Amendment? And maybe I can help you. Are  
2 you able to answer the question, the pending  
3 question?

4 A. I don't recall why I voted no.

5 Q. So in the Whereas clause, the fourth  
6 Whereas clause, it says, "Whereas the Borough and  
7 the redeveloper have agreed to enter into a First  
8 Amendment to the redevelopment agreement with the  
9 specific intention to amend and supplement the  
10 property descriptions to be redeveloped, as set  
11 forth and attached hereto in form and substance as  
12 Exhibit A."

13 A. They were including properties that  
14 weren't there in the original agreement.

15 Q. Okay. But it was within the  
16 redevelopment zone. Correct?

17 A. Yes.

18 Q. Okay. And that's why you voted against  
19 it?

20 A. Correct.

21 Q. Why? Why was that objectionable to you?

22 MR. BOTTA: Objection, asked and  
23 answered.

24 MR. FIORENZO: No, it hasn't.

25 MR. BOTTA: She answered why she voted

1 no.

2 MR. FIORENZO: No, I'm asking her  
3 specifically now that I've shown her and she said --

4 A. Because they were including more  
5 properties.

6 Q. Right. And what was it about the  
7 inclusion of those properties that was objectionable  
8 to you that led you to vote no?

9 A. Because I believe our planner was saying  
10 that these businesses were blighted and I did not  
11 agree.

12 Q. So that's a different issue. So you're  
13 saying --

14 A. But I think that's why they were  
15 included in the next amendment.

16 Q. So you're saying --

17 A. In the First Amendment.

18 Q. You're saying you voted no because  
19 something the planner had concluded?

20 A. I don't recall.

21 Q. Okay. In any event, you voted no and  
22 everybody else voted yes.

23 A. Yeah.

24 Q. All right. So the agreement was  
25 amended.

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1 MR. FIORENZO: Pull the agreement up,  
2 please.

3 MR. KLEIN: DD-6.

4 Q. I'm glad you're having fun.

5 That's the First Amendment, ma'am, DD-6. You  
6 saw the First Amendment before you voted no, I take  
7 it. Correct?

8 A. Yes.

9 Q. So the redeveloper had submitted a  
10 proposal to the town. Correct?

11 A. Yes.

12 Q. Was there an RFP?

13 A. Yeah.

14 Q. And a number of developers submitted  
15 proposals --

16 A. Yes.

17 Q. -- and this developer was the one who  
18 was selected. Correct?

19 A. Not this developer. Joseph Forgione's  
20 company was selected.

21 Q. Well, ma'am, this is Joseph Forgione's  
22 company right here. Right? In 2016, Emerson  
23 Redevelopers Urban Renewal, LLC, was Mr. Forgione's  
24 company, wasn't it?

25 A. Yes.



1 Q. Okay. So this was the redeveloper  
2 selected to develop the site. Right?

3 A. Yes.

4 Q. Okay. And it says, that second  
5 Wherefore clause, "The parties are desirous of  
6 amending and supplementing the redevelopment  
7 agreement to reflect their mutual understanding with  
8 respect to the implementation of the redeveloper's  
9 proposal submitted to the Borough." Okay?

10 And let's scroll to the second page, please.  
11 Stop there, please. Okay.

12 Paragraph 2 is the intent of the amendment to  
13 supplement the description of the properties. So do  
14 you know what the change to the description of the  
15 properties was?

16 A. I believe they were adding the corner  
17 property.

18 Q. When you say the corner property,  
19 describe it.

20 A. It was a restaurant.

21 Q. What restaurant?

22 A. I don't recall the name.

23 MR. FIORENZO: Go to the next paragraph,  
24 Steve, just scroll down.

25 Q. Is that the property?

1 A. I believe so.

2 Q. Okay. So Block 419, Lot 9 was added, is  
3 that your understanding at the time?

4 A. Was what my understanding?

5 Q. That Block 419, Lot 9 was added to the  
6 property and that was one of the reasons for the  
7 amendment?

8 A. I think that's the only reason, isn't  
9 it?

10 Q. Is it?

11 A. I'd have to read the whole document.

12 Q. Okay. Well, then I don't know why you  
13 said that then. Is that one of the reasons though?

14 A. Clearly.

15 Q. Okay. And Block 419, Lot 9, do you know  
16 who owned that?

17 A. I think it's the restaurant and I think  
18 I know who owned it, yes.

19 Q. Who do you think it was?

20 A. I think it was a man by the name of  
21 Lopata.

22 Q. And you knew him. Right?

23 A. Vaguely.

24 Q. You went to his restaurant.

25 A. I don't think it was his restaurant. I

1 think he leased it.

2 Q. Okay. To whom?

3 A. Several restaurants were there, that's  
4 why I don't recall the name.

5 Q. At this time do you know who was there?

6 A. I don't recall.

7 Q. And then if we continue down, go to  
8 paragraph 5, it refers to the First Amendment  
9 together with the proposal, the Land Use Board  
10 resolutions, and any orders or directives of any  
11 authorized official, it goes on and on, represent  
12 the understanding of the Borough and the  
13 redeveloper. Do you see that?

14 A. Yes.

15 Q. Okay. So, again, I just want to be  
16 clear, the only reason you've given why you voted  
17 against this was the addition of that piece of land?

18 A. I --

19 Q. Is that the reason, the only reason why  
20 you voted no?

21 A. I don't recall.

22 Q. All right. So after this First  
23 Amendment, in 2016, were there any public meetings  
24 that occurred concerning amendments to the  
25 redevelopment plan, the one that I showed you

1 earlier from back in 2006, do you know if there were  
2 public meetings and hearings regarding an amendment  
3 to that plan?

4 A. At what point?

5 Q. In 2016. Shortly after this First  
6 Amendment.

7 A. I don't recall.

8 MR. FIORENZO: Would you pull up E13,  
9 please.

10 MR. KLEIN: This will be DD-7.

11 Q. So these are minutes of a meeting of the  
12 Mayor and Council on December 20, 2016. You were a  
13 member -- you were a council member at that time.  
14 Correct?

15 A. Yes.

16 Q. Okay. And these -- and that's going to  
17 be DD-7. So these minutes --

18 MR. FIORENZO: If you could, Steve, just  
19 turn to here, page 5.

20 MR. BOTTA: What are the dates of the  
21 minutes?

22 MR. FIORENZO: December 20, 2016.

23 Q. So there's a long description of what  
24 happened at this hearing, but I just want to ask you  
25 a question about your participation in the meeting

1 at that time. Do you remember at the conclusion of  
2 this, this proposal to amend the redevelopment plan,  
3 that you opposed it, you voted no?

4 A. I don't recall.

5 Q. Okay. In the minutes of the meeting,  
6 there's a paragraph -- there's a -- next to last  
7 paragraph from the bottom where it said,  
8 Councilwoman DiPaola received. It says,  
9 "Councilwoman DiPaola received confirmation from  
10 Mr. Doyle that it included all the blocks and lots  
11 he read off. She," referring to you, "said that  
12 everyone was under the impression that the fourth  
13 story would only be allowed for the JMF property.  
14 But if it was for CBD-10, it represented a larger  
15 parcel. She said if this was approved, it would  
16 allow a fourth story elsewhere, as well as decreased  
17 parking and everything else. Mr. Doyle said the  
18 Borough had already allowed the height that JMF was  
19 proposing to build in other locations to 40 feet.  
20 He said they would now be making the east side the  
21 same as the west side. He stated that what the  
22 governing body said was that this might be okay, but  
23 on Kinderkamack Road and Lincoln Boulevard, the  
24 50-foot building would be required to have a  
25 five-foot setback on the top story."

1           Now, do you remember having this discussion at  
2           the time of this meeting?

3           A.       I don't recall.

4           Q.       Do you remember expressing concerns  
5           about it being four stories as the minutes reflect?

6           A.       Absolutely.

7           Q.       Okay. You didn't like that. Correct?

8           A.       I was opposed to fourth story, yes.

9           Q.       Right, right. And you made that clear  
10          on the record. Right?

11          A.       Yes.

12          Q.       Okay. And go to the next page, please.  
13          So there's a -- it says Mr. Esque. Do you see  
14          that?

15          A.       It's small.

16          Q.       Okay. So apparently they had some  
17          people who spoke in connection with this public  
18          hearing. Right? And there's a Mr. Esque, and  
19          underneath the heading for him -- well -- yeah,  
20          yeah, yeah, continue down. You've got to make it  
21          tighter. Yeah, right there. That's it.

22          Okay. So Mr. Esque speaks, and then -- I  
23          won't get into his comments. And then Mr. Doyle --  
24          the minutes reflect that Mr. Doyle responded, "It  
25          was not so much fear, either the governing body

1 would do what was best for the community or the  
2 Court would come in and follow the constitution and  
3 do what needed to provide low and moderate income  
4 housing."

5 So you were there when Mr. Doyle said that.  
6 Correct?

7 A. Correct.

8 Q. So you understood that what was  
9 happening here as to this amendment was trying to  
10 address this affordable housing obligation so that  
11 Emerson could control its own destiny rather than  
12 the Court deciding it. Correct?

13 MR. BOTTA: Objection to the form.  
14 You're mischaracterizing what the minutes say. Let  
15 her just read the minutes.

16 Q. You can answer my question. You need to  
17 have it read back?

18 A. Can you rephrase that?

19 Q. Yeah.

20 MR. FIORENZO: Could you just read it  
21 back to the witness, please?

22 A. I didn't say repeat, I said rephrase.

23 Q. Well, unless -- what don't you  
24 understand?

25 A. Repeat and rephrase maybe.

1 MR. FIORENZO: Repeat the question for  
2 her.

3 Q. And then tell me if there's something  
4 that was not understood by you.

5 (The record is read by the reporter.)

6 MR. SEAMAN: Objection to form.

7 A. I don't recall.

8 Q. Yeah, I mean, Mr. Doyle was explaining  
9 that the Court could come in and follow the  
10 constitution and make the decision on affordable  
11 housing. You understood that was an option. Right?

12 A. I don't recall what I remembered at that  
13 moment.

14 Q. Well, don't you know that as you sit  
15 here today --

16 A. I don't recall.

17 Q. -- that if the town doesn't deal with  
18 the problem, the Court can then impose a solution  
19 for affordable housing? You know that, don't you?

20 A. I know it's a possibility.

21 Q. Yeah. In fact, not only is it a  
22 possibility, you went on and said, "Councilwoman  
23 DiPaola asked if another judge could have another  
24 decision." So you were asking the attorney who's  
25 telling you, well, the Court would come in and



1 impose something, you then said, well, can we get  
2 another judge?

3 MR. SEAMAN: Objection to form.

4 Q. In substance, that's what you asked.  
5 Right?

6 MR. SEAMAN: Objection to form.

7 A. I don't recall and I don't think that's  
8 what I was saying.

9 Q. Well, when you said, "Councilwoman  
10 DiPaola" -- first of all, do you deny making that  
11 statement reflected in the minutes?

12 A. I don't recall making that statement.

13 Q. So let's assume the minutes are accurate  
14 then, that you made that statement. It says,  
15 "Councilwoman DiPaola asked if another judge could  
16 have another decision." So by another judge, did  
17 you mean some judge other than the one who was then  
18 handling it?

19 MR. SEAMAN: Objection to form.

20 A. I think I was just asking the opinion of  
21 this was one judge's opinion, could another judge  
22 have had a different opinion on what our number was.

23 Q. Okay. And that's why you said could  
24 another judge have another decision. Correct?

25 A. I wasn't asking for another judge to

1 make the decision, I was just inferring that this  
2 was one judge's opinion and that perhaps another  
3 judge may have made a different decision.

4 Q. And you were asking that question in  
5 response to Mr. Doyle saying that the Court would  
6 come in and follow the constitution and do what they  
7 needed to provide low and moderate income housing.  
8 You were asking that question in response to that.  
9 Correct?

10 A. I don't know if anything was left out of  
11 the minutes. I don't -- I would have to listen to a  
12 tape.

13 Q. Do you deny the accuracy of the minutes?

14 A. Minutes are not word for word.

15 Q. Do you deny the accuracy of those  
16 minutes in substance?

17 A. They're not word for word, so I don't  
18 know what was intended.

19 Q. You vote on the minutes, don't you?

20 A. Minutes are not word for word.

21 Q. Ma'am, you vote and approve the minutes  
22 of the prior meeting at your next meeting, don't  
23 you?

24 A. Yes.

25 Q. And you voted to approve the minutes as

1 being accurate, did you not?

2 A. Yes, but you're asking me a question  
3 that has to do with the whole meeting, and I don't  
4 know in what context that the clerk put those  
5 specific words into the minutes.

6 Q. It doesn't matter, because when they --

7 A. It matters to me to answer your  
8 question.

9 Q. -- when they present the minutes to you  
10 and all the members of the governing body at the  
11 next meeting, one of the first items on your agenda  
12 was, do you -- is there a motion to approve the  
13 minutes of the prior meeting.

14 A. You're asking --

15 Q. Let me finish. And you voted yes. You  
16 approved the minutes. Correct?

17 A. You're asking me --

18 Q. Is that true or not?

19 A. You're asking me --

20 Q. Stick with my question.

21 A. -- a specific question about going back  
22 to the original question.

23 Q. I'm asking if you approved the minutes.  
24 Did you vote yes on the minutes?

25 A. I don't remember if I approved the

1 minutes.

2 Q. Okay. Well, let me show you here -- do  
3 you deny approving the minutes?

4 A. I don't recall.

5 MR. FIORENZO: Steve, pull that up where  
6 it shows that.

7 Q. So part of the minutes, up at the top  
8 you see Agenda No. 27 approved for release and  
9 content 1/17/17. Do you remember that on January 7,  
10 2017, there was a vote and the minutes were approved  
11 to be released to the public?

12 MR. SEAMAN: January 17th. You said  
13 January 7th.

14 Q. January 17th, 2017. You don't remember  
15 that. Right?

16 A. No.

17 Q. Okay. In any event, you voted against  
18 it. Right?

19 MR. SEAMAN: Objection to form.

20 A. Voted against what?

21 Q. You voted against the amendment to the  
22 redevelopment plan.

23 MR. KLEIN: This will be DD-8.

24 Q. So this is -- DD-8 is a Notice of  
25 Adoption of Ordinance No. 1535-16 adopted on

1 December 20, 2016, an ordinance amending the central  
2 business district redevelopment plan. And it  
3 provides that -- just let me run through it real  
4 quickly.

5 There's a number of Whereas clauses. The  
6 second one says, "The board conducted the requested  
7 investigation and held requisite hearings on July  
8 29, August 19, which were all done on notice as to  
9 whether the area met the statutory requirement as an  
10 area in need of redevelopment."

11 So you're aware that happened. Right?

12 A. I don't recall.

13 Q. And then on September 7, '04, there was  
14 a resolution adopted by the Mayor and Council. Were  
15 you aware of that?

16 A. I don't recall.

17 Q. And on December 14, 2004, the Mayor and  
18 Council adopted a resolution designating the area as  
19 an area in need of redevelopment. Were you aware of  
20 that?

21 A. I wasn't involved in 2004.

22 Q. And you didn't become aware of it later  
23 on, the history, you didn't understand the history  
24 leading up to the different votes you took?

25 A. I don't know if I specifically knew

1 about that specific instance.

2 Q. This document was the one you voted on.  
3 You voted no. So it was in the document you were  
4 asked to consider and vote on. Correct?

5 A. Then I guess my answer if I don't recall  
6 would be accurate.

7 Q. Did you review resolutions before you  
8 voted on them --

9 A. I don't recall.

10 Q. -- so you could understand the content?

11 A. I don't recall.

12 Q. So would you ever vote on a resolution  
13 that you didn't read?

14 A. I don't know.

15 MR. SEAMAN: Objection to form.

16 Q. So it's possible you would? You're  
17 telling me it's possible you would vote on a  
18 resolution you didn't read? It's not that hard.  
19 Could you give me an answer?

20 MR. BOTTA: She did answer.

21 A. I generally read everything that I vote  
22 on.

23 MR. FIORENZO: Well, I'm waiting. I'm  
24 waiting thirty seconds. She hasn't answered. How  
25 much longer do you need?

1 MR. BOTTA: The transcript doesn't say  
2 that. She can answer whenever she wants.

3 MR. FIORENZO: She can. I'm waiting  
4 thirty seconds for a response to that.

5 Q. What's the answer?

6 A. I said I generally read resolutions  
7 before I vote on them.

8 Q. Of course you do. It would be  
9 irresponsible not to. Right?

10 MR. BOTTA: Objection.

11 MR. SEAMAN: Objection.

12 Q. Would you agree it would be the height  
13 of irresponsibility of a public official, council  
14 person, mayor, to vote on a resolution that you  
15 don't read?

16 MR. SEAMAN: Objection to form.

17 A. Generally.

18 Q. Okay. So having read all this, let me  
19 refer over to -- just go to the vote part of it, not  
20 that. Where it shows the vote, last page.

21 Before I get to that, Steve.

22 So this ordinance dealt specifically with the  
23 issue of height. Are you aware of that?

24 A. Can I see the whole document?

25 Q. You can see whatever you want, sure.

1 MR. FIORENZO: Can you get a hard copy  
2 and give it to her? She wants to see it.

3 Q. We'll give you a hard copy, that way you  
4 can review it and make sure you're comfortable with  
5 seeing it. Okay?

6 A. Fabulous.

7 Q. Great. We're just here to help any way  
8 we can. Anything you need, you let us know.

9 A. Thank you.

10 Q. So I want -- as you're reading it, I  
11 want you to take a look specifically at the section  
12 that I've highlighted there, which is subparagraph  
13 section 4(f). So this ordinance addresses --

14 A. Sir, I'm reading.

15 Q. What does that mean?

16 A. It means I'm reading.

17 Q. So? I'm going to ask you a question and  
18 then your reading will be informed.

19 A. I know, but I asked if I could see the  
20 document and you're not letting me see it and read  
21 it.

22 Q. For what purpose? There's no question.

23 A. You asked me a question. I asked to see  
24 the document.

25 MR. BOTTA: Let her review it.



1           Q.       I'm going to ask you a question right  
2 now, and if you want to read it, read whatever you  
3 want. But right now there's no purpose for reading  
4 it until I ask the question.

5           So my question is, in the document, does this  
6 document deal with amendment to the ordinance  
7 concerning building height in the CBD-W zone  
8 reflected in subparagraph (f)?

9           MR. SEAMAN: Danielle, please take any  
10 time you need to review the document before you  
11 answer his question.

12          A.       Can you ask your question again or  
13 repeat it?

14          Q.       Yeah. Section (f) -- section 4(f), did  
15 you understand that this ordinance dealt, in part,  
16 with building height?

17          A.       Yes.

18          Q.       And it spoke about the CBD-W zone and it  
19 addressed the issue of four stories. Correct?

20          A.       Correct.

21          Q.       Did you oppose that?

22          A.       I opposed it.

23          Q.       Why?

24          A.       'Cause it's too high.

25          Q.       Too high for what?

1 A. Our small downtown.

2 Q. You previously testified at your last --  
3 in another deposition that you understood that the  
4 reason why the four-story amendment occurred was  
5 because there was a certain level of density needed  
6 in a Mount Laurel project. You understood that.  
7 Correct? Do you remember that?

8 A. I don't think I said that. I think what  
9 I --

10 Q. Oh, you did.

11 A. There was a fourth story needed so that  
12 the developer could make more money because he spent  
13 more money acquiring the property, so they gave him  
14 the fourth floor so that he would make more money on  
15 the actual market rate units.

16 Q. So that's your position today.

17 A. I think that's always been my position.

18 Q. Well, it's not, but that's okay.

19 MR. BOTTA: How do you know her  
20 position?

21 MR. FIORENZO: Because it's in the  
22 deposition.

23 MR. BOTTA: Well, then fine.

24 MR. FIORENZO: Yeah, so I know it's not.

25 MR. BOTTA: So you represent that.

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1 MR. FIORENZO: Yeah, yeah, yeah. No,  
2 I'm just --

3 MR. BOTTA: Let her present her  
4 position. You don't need your position.

5 Q. That's your position today, right, that  
6 it was all just because of the money, not because it  
7 was needed to create sufficient density to  
8 accommodate affordable units. Correct?

9 A. I don't believe I said that.

10 Q. Okay. I'm just asking your position  
11 today.

12 A. And if I said that, I may not have  
13 understood your question, because --

14 Q. Well, of course.

15 A. -- the reason for the fourth story was  
16 clearly so that the developer could make more money  
17 because he spent too much money on the project.

18 Q. Right, that's your --

19 A. So if I said something other than that,  
20 I may have misspoke.

21 Q. Well, the record's going to reflect what  
22 you clearly said before, and so -- but your position  
23 now is that it was all about the money. Right?

24 MR. SEAMAN: Objection to form.

25 Q. Correct?

1           A.       On the developer's end, yes.

2           Q.       Well, on the town's end, did you  
3 understand as a member of the governing body the  
4 reason there was another floor was because there was  
5 greater density required to accommodate the  
6 affordable housing, did you understand that?

7                   MR. SEAMAN: Objection to form.

8           A.       The only reason for a fourth story was  
9 to make more apartments which was in order to make  
10 more money for the developer because he had to put  
11 in the affordable housing, and he felt after  
12 purchasing all of the properties that he spent too  
13 much money on the properties and that he had a  
14 higher per door, so the fourth floor was added so  
15 that he could add more market rate units to make the  
16 project feasible for him to do.

17          Q.       Okay. Fair enough. Got it.

18          So I show you the last page of the exhibit.  
19 Again, you voted against this ordinance, this  
20 resolution adopting an ordinance. Correct?

21          A.       I voted no on this ordinance.

22          Q.       And why did you vote no?

23          A.       Because I was against the fourth story.

24          Q.       Okay.

25                   MR. FIORENZO: Steve, pull up the next

1 one.

2 A. I believe Lamatina broke this tie.

3 MR. KLEIN: This is DD-9.

4 Q. DD-9 is a resolution of the Borough of  
5 Emerson dated July 2017. Do you recall that there  
6 was a second amendment to the redevelopment  
7 agreement in 2017?

8 A. Yes.

9 Q. And do you know what the purpose of that  
10 second amendment was?

11 A. I'd have to see the document.

12 Q. Again, you voted against this. Correct?

13 A. I'd have to see.

14 MR. FIORENZO: Turn to the last page,  
15 please.

16 Q. So, again, on the second amendment, you  
17 voted no. True?

18 A. Yes, that's what it says.

19 Q. Okay. Well, you have to say -- you have  
20 to say yes on the record, so.

21 A. I did. I said yes, that's what it says.

22 Q. And was the reason you voted no having  
23 to do with four stories?

24 A. I'd have to read the whole document  
25 again.

1 Q. Is there any other reason? You have the  
2 whole document in front of you.

3 A. I think I've told you in the last  
4 deposition that my opposition to this development  
5 was that it was too dense.

6 Q. Yeah.

7 A. And adding a fourth story was only going  
8 to make it more dense. However, I don't recall  
9 specifically what the second amendment was.

10 Q. Do you know how many affordable units  
11 had to be accommodated at the site?

12 A. Yes.

13 Q. How many?

14 A. I think 47.

15 Q. And do you know whether the -- this plan  
16 was reviewed by the Special Master?

17 A. I think it's actually 27, but I'm  
18 blanking. I think that there was a component where  
19 they needed to review it.

20 Q. Yeah, the Master had to review it and  
21 approve it. Correct?

22 A. I believe so.

23 Q. And the Court had to review it and  
24 approve it. Correct?

25 A. I don't know if we were at that point.

1 I guess, yeah.

2 Q. Well, later there was a hearing on this,  
3 a fairness hearing. Correct?

4 A. Yes.

5 Q. Okay. So all of this stuff that was  
6 proposed to be developed in order to address the  
7 affordable housing units at the site were reviewed  
8 and approved by the Court and a court-appointed  
9 monitor. Right?

10 A. Yes.

11 Q. And although both of them approved it,  
12 you voted no. Correct?

13 MR. SEAMAN: Objection to form.

14 A. I voted no on what? On this?

15 Q. Yes.

16 A. I'd have to see that document.

17 Q. No, on this. You voted no.

18 A. Yeah, but you're just showing me the  
19 vote. I don't know what it said.

20 Q. It's in front of you. That's the one  
21 you were reading before.

22 A. You said that's the resolution. This is  
23 the ordinance or this is the resolution? This is an  
24 ordinance that you gave me. You said resolution.

25 Q. You have in front of you what's up on

1 the board.

2 MR. BOTTA: So I think --

3 MR. SEAMAN: The witness does not have  
4 what's -- that's not what she has in front of her.

5 Q. All right. So what do you want, what do  
6 you need?

7 A. Whatever you're asking me what I voted  
8 on.

9 Q. All right. You want to scroll back?

10 MR. FIORENZO: Let's go back, Steve.  
11 Pull it out and -- okay. Give her a hard copy so  
12 she's got that as well.

13 A. I'm right. Right? This is an  
14 ordinance, that's a resolution.

15 Q. So let's -- funny, you're having a good  
16 time?

17 A. I think you're trying to trick me, like  
18 I don't know the difference between an ordinance and  
19 a resolution. It clearly says resolution.

20 Q. Do you know the difference?

21 A. You're telling me there's something in  
22 front of me and it says ordinance and I do know how  
23 to read.

24 Q. Do you know the difference between the  
25 two? Ma'am? Do you know the difference?



1 MR. BOTTA: Objection.

2 A. Yes, I do know the difference.

3 MR. BOTTA: You're being argumentative  
4 now.

5 MR. FIORENZO: I'm not. I'm following  
6 up on her comment.

7 Q. What is the difference?

8 A. An ordinance is a law in the town and a  
9 resolution is basically an agreement that generally  
10 shows whether the governing body agrees with an  
11 action or not.

12 Q. Do you adopt an ordinance by a  
13 resolution?

14 A. What?

15 Q. Do you adopt an ordinance by a  
16 resolution?

17 MR. BOTTA: It's a Title 40 test,  
18 Danielle.

19 A. Do you adopt -- yes.

20 Q. Okay. So the resolution is utilized for  
21 the purpose of adopting ordinances or local law.  
22 Right?

23 MR. BOTTA: Objection, calls for a legal  
24 conclusion. Can we get back to the question on the  
25 ordinance or the resolution or whatever you want to

1 know?

2 MR. FIORENZO: We'll get back to it when  
3 I'm ready to and I'm not ready to yet.

4 Q. Are you reviewing something for the  
5 purpose of answering my question?

6 A. I am.

7 Q. Okay.

8 A. All costs --

9 MR. SEAMAN: Danielle, read silently,  
10 please.

11 MR. FIORENZO: All right. I'll withdraw  
12 the pending question, that way we can move on. The  
13 witness has been reading the document for quite some  
14 time.

15 MR. SEAMAN: He doesn't want to ask  
16 about that, so you can put that aside and answer his  
17 questions.

18 Q. Yeah.

19 MR. FIORENZO: So, Steve, scroll back up  
20 on this, please. Scroll to the first paragraph.  
21 Scroll down a little bit, please. Okay.

22 Q. So this is the second amendment.

23 MR. BOTTA: Objection to form.

24 Q. Oh, it's the resolution. Yeah, the  
25 resolution adopting -- or voting for the second

1 amendment.

2 Turn to the second page, please.

3 It says in paragraph 2 that the purpose and  
4 intent of the amendment is to amend and supplement  
5 the affordable housing requirements. So were you  
6 aware of that at the time that you voted on it?

7 A. I don't recall.

8 Q. It goes on to amend certain provisions  
9 in the redevelopment agreement, and in particular,  
10 the definition of affordable housing requirements.  
11 Do you see that?

12 A. I see it.

13 Q. What was the reason why you voted  
14 against this?

15 A. Because this included eminent domain.

16 Q. Okay. It also included a provision that  
17 addressed the affordable housing obligations of  
18 Emerson pursuant to the Court's prior rulings.  
19 Correct?

20 A. Correct.

21 Q. And it provided that the affordable  
22 housing could be addressed through the construction  
23 of affordable units on site, or two, construct  
24 affordable units elsewhere within the Borough  
25 (off-site). Do you see that?

1 A. I see it.

2 Q. Do you recall the discussions that took  
3 place at that time --

4 A. I don't recall.

5 Q. You've got to let me finish.

6 -- regarding the issue of the affordable units  
7 being on-site versus off-site?

8 A. I don't recall.

9 Q. Was there a discussion at that time  
10 about the number of units required to go off-site?

11 A. I don't specifically recall right now.

12 MR. FIORENZO: Scroll down, Steve,  
13 please. Highlight number 4, please.

14 Q. Okay. Section 4 point -- Article 4.01  
15 of the agreement was also amended, and it makes  
16 reference here to use of eminent domain to acquire  
17 the property. Do you see that?

18 A. I see it.

19 Q. And you know what eminent domain is.  
20 Right?

21 A. I do.

22 Q. That's when the municipality or state  
23 determines to condemn or take property by paying  
24 just compensation to the property owner for some  
25 public purpose. Correct?

1           A.       Correct.

2           Q.       Okay. So you say that you voted against  
3 this because of eminent domain. Up to this date,  
4 was there any provision in the redevelopment  
5 agreement that obligated Emerson to use eminent  
6 domain if needed to assemble the land in this  
7 redevelopment zone?

8           A.       I don't recall, but I do know that once  
9 a redevelopment plan is in place, eminent domain is  
10 on the table.

11          Q.       Right. It's on the table not only by  
12 agreement but by statute. Correct?

13          A.       Correct.

14          Q.       All right. So to the extent that this  
15 is now providing for an amendment to 4.01 and it  
16 refers to the cost of acquisition, including eminent  
17 domain, the issue of eminent domain had been on the  
18 table and part of this since the time of the  
19 adoption of the original redevelopment plan.  
20 Correct?

21          A.       Yes, but now they were actually talking  
22 about doing it and talking about putting it right  
23 here when they didn't need to specifically put it in  
24 a document because it was already in the law.

25          Q.       It was already in the document.

1           A.       So the fact that they were putting it in  
2       here, they were drawing attention to the fact that  
3       it may actually happen.

4           Q.       Well, wasn't it already in a document?

5           A.       I don't recall.

6           Q.       Didn't the original redevelopment  
7       agreement provide specifically for eminent domain if  
8       needed?

9           A.       I don't recall.

10          Q.       So you don't know if it's now put in  
11       here for the first time or not.

12          A.       I don't recall.

13          Q.       Okay. And you understood the reasons  
14       for the -- there being a provision in law and in the  
15       agreement for eminent domain. Right? You  
16       understood why that was there.

17          A.       I do understand eminent domain, yes.

18          Q.       What did you understand the reason why  
19       it was in the redevelopment agreement and in the  
20       statute?

21          A.       To take away property for a public use.

22          Q.       Okay. So if there's a determination  
23       made that a property is now a redevelopment zone, an  
24       area in need of redevelopment, there's a statutory  
25       right to be able to condemn it 'cause that's a

1 public purpose. Correct? As you understood it.

2 A. Can you say that again?

3 Q. Yes. So if there's a provision in the  
4 law that permits eminent domain, it would then be  
5 there to permit the town to use it for the public  
6 purpose of creating a redevelopment zone. Correct?

7 A. Yes, but I don't agree with eminent  
8 domain.

9 Q. I understand. You may disagree with the  
10 law, but that's the law. Right? You disagree with  
11 it though.

12 A. It's something that's permitted in the  
13 law, yes.

14 Q. And I think you've told me previously  
15 you're philosophically opposed to that. Right?

16 A. Yes.

17 Q. You think it's wrong.

18 A. As used in this purpose, yes.

19 Q. And you think it's unfair to property  
20 owners.

21 A. It was unfair in Emerson, yes.

22 Q. Right. And you felt very strongly about  
23 that. Right?

24 A. Yes.

25 Q. Because in your view, that would result

1 in potentially if the -- well, withdrawn.

2 You understood the way the process would work  
3 would be the following, that the developer --  
4 redeveloper would initiate communications with the  
5 property owner or tenant and try to negotiate an  
6 amount to pay them. That's step one. Right?

7 A. Yes.

8 Q. And if they were unable to reach such an  
9 agreement, they then had a right to come to the town  
10 and say, I need you to initiate a condemnation  
11 proceeding so I can take the property, and then the  
12 redeveloper ultimately would have to pay whatever  
13 was determined to be the fair market value. Right?

14 A. Yes.

15 Q. Okay. And you understood that if we  
16 assume that the creation of this redevelopment zone  
17 was for a public purpose as found by the governing  
18 body, that this eminent domain was a necessary --  
19 potentially necessary tool to be able to get the  
20 property you needed to develop the site. You  
21 understood that. Correct?

22 A. Yes, but I didn't feel that site was the  
23 necessary spot to fulfill affordable housing.

24 Q. Right. Well, I know that.

25 A. I had no issue abiding by the judge's



1 ruling that we had to have the affordable housing.  
2 My argument was that it didn't have to be on that  
3 site --

4 Q. Well, I don't want to go over this  
5 again.

6 A. -- taking away all of the businesses  
7 that were still open and working. I think you  
8 recall that from my last deposition.

9 Q. I do. You felt really badly, you had a  
10 lot of friends there.

11 A. I never said friends.

12 Q. Well, you said Cork & --

13 A. You said friends.

14 Q. Cork & Keg, you used to go see them  
15 every day you said or almost every day. Right?

16 A. I didn't say that.

17 Q. You didn't say that?

18 A. Are you putting words in my mouth again?

19 Q. Are you saying you didn't say that?

20 A. I think you're putting words in my  
21 mouth.

22 Q. Are you saying --

23 A. I think in the last deposition you tried  
24 to tell me they were my friends and I didn't tell  
25 you they were my friends.

1 Q. No, no, no, no, no, no, no.

2 MR. BOTTA: Joe, move on.

3 Q. No, no, no, no. Let's be real clear.  
4 Do you deny that you went to Cork & Keg almost every  
5 day?

6 A. I bought cigarettes at Cork & Keg. I  
7 don't know if it was every day.

8 Q. And you had a social relationship with  
9 those people?

10 MR. SEAMAN: Objection to form.

11 A. I don't recall.

12 Q. And you knew all of these people whose  
13 businesses potentially would be taken. Correct?

14 A. I generally know all of the business  
15 owners in Emerson.

16 Q. Yes. And so the answer to my question  
17 would be yes, you knew them all. Correct?

18 A. I knew them, yes.

19 Q. Okay. And you felt badly, you said a  
20 moment ago you felt that this project should have  
21 been somewhere else, not here. Right?

22 A. I don't recall what I said.

23 Q. No, no. You just said it a moment ago.  
24 You just told me --

25 A. I said it could have been somewhere

1 else.

2 Q. Right, right, it could have been. And  
3 you knew that someone undertook an analysis in  
4 Emerson, a vacant land analysis to determine what  
5 sites might be available for the affordable housing.  
6 You knew that. Correct?

7 A. Say that again?

8 MR. SEAMAN: At what point in time?

9 Q. Did you know when you were on the  
10 governing body that there had been an analysis of  
11 the available land in Emerson to determine what the  
12 appropriate sites would be to be able to site  
13 affordable housing?

14 A. The land wasn't available.

15 Q. The determination of availability was to  
16 be made here by the Special Master, wasn't it?

17 A. I don't know.

18 Q. The Special Master, in fact, was charged  
19 with the responsibility of overseeing the siting of  
20 this Mount Laurel housing. Are you aware of that?

21 A. I don't remember.

22 Q. And this site was the one that was  
23 ultimately settled upon as the most likely to be  
24 able to accommodate a substantial portion of  
25 Emerson's affordable needs. Correct?

1           A.       I honestly don't remember.

2           Q.       You don't know?

3           A.       I don't remember how this happened.

4           Q.       So in any event, you voted against the  
5 second amendment.

6                   MR. FIORENZO: Scroll down, Steve,  
7 please. No, no, no, go back up to the next numbered  
8 paragraph.

9           Q.       So just -- I'm going to ask you a  
10 question generally. Tell me then, what were the  
11 reasons why you voted against this second amendment  
12 which was intended to address the affordable housing  
13 requirements, why did you do that?

14          A.       I don't recall. I told you that I was  
15 against eminent domain.

16          Q.       Yes.

17          A.       I don't recall why else.

18          Q.       Other than that, can you remember any  
19 other reason?

20          A.       I was opposed to the density of the  
21 project, which is why I voted no on the majority of  
22 votes that came up.

23          Q.       Well, this doesn't -- the second  
24 amendment didn't address density.

25          A.       Everything addresses the project.

1 Q. No, no, no, excuse me. Is there  
2 anywhere in this agreement where they address  
3 density? The second amendment.

4 MR. BOTTA: Well, doesn't it incorporate  
5 the First Amendment and the redevelopment agreement?

6 Q. You can answer.

7 A. This is an addendum, this is a second --  
8 what do you call it, a second --

9 Q. Amendment.

10 A. Amendment to a redevelopment  
11 agreement --

12 Q. Okay.

13 A. -- which I opposed from the get-go.

14 Q. Got it. Okay. So your position is the  
15 density -- it was too much density.

16 A. Yes.

17 Q. You didn't like it because eminent  
18 domain, number one, too much density, number two.  
19 Anything else?

20 A. It didn't fit into our downtown, it was  
21 too big.

22 Q. Too big, number three. Anything else?

23 A. A fourth story.

24 Q. Fourth story, number four. Anything  
25 else?

1 A. It also speaks to density.

2 Q. What?

3 A. I believe it also speaks to density and  
4 eminent domain --

5 Q. We did that.

6 A. -- that I was against.

7 Q. We did that one already. I guess the  
8 height increases the density. Right?

9 A. Uh-hum.

10 Q. Yes. Anything else? Anything else?

11 A. No.

12 Q. Okay. And all of these issues that you  
13 raised were considered by the Special Master when a  
14 determination was made as to whether to recommend  
15 this site to the Court. Correct?

16 A. I guess.

17 Q. Okay. Now, after the second  
18 amendment --

19 A. What time is it?

20 Q. -- did you -- it's 11:45.

21 A. Thank you.

22 Q. You're welcome. And by the way, so  
23 we're in -- let's see, this is 7/18/17. The date of  
24 this is July 18th of '17. So at this point when  
25 this is going on, there is already pending the

1 lawsuit filed by Emerson. Correct?

2 A. What do you mean?

3 Q. Emerson filed a lawsuit in the Superior  
4 Court of New Jersey seeking protection from  
5 builder's remedy lawsuits. Right?

6 A. I think that was filed in '15.

7 Q. Right. So I'm going to show it to you  
8 in a minute, but there was a suit that was  
9 instituted by Emerson. Correct?

10 A. Yeah.

11 MR. FIORENZO: Okay. Would you pull  
12 that up?

13 MR. KLEIN: This will be DD-10.

14 MR. FIORENZO: Yeah, whatever. I'm  
15 losing track. DD-10, Steve?

16 MR. KLEIN: Yes.

17 MR. FIORENZO: Okay.

18 Q. Okay. DD-10 is a letter from the  
19 DeCotiis law firm, July 9, 2005. It encloses a  
20 complaint, Order to Show Cause, and a variety of  
21 other legal documents.

22 MR. FIORENZO: Turn to the next page,  
23 please.

24 MR. SEAMAN: You meant 2015, Joe.

25 Right?

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1 MR. FIORENZO: '15, yeah. Thank you.  
2 2015.

3 And turn to the first page of the  
4 complaint. There we go.

5 Q. So this is the complaint filed by  
6 Emerson in the matter of the application of the  
7 Borough of Emerson, Bergen County, New Jersey, for a  
8 declaratory judgment which was filed on or about  
9 July 2015. You were aware that a suit was filed.  
10 Correct?

11 A. Yeah.

12 Q. You sat on the governing body when they  
13 voted to authorize the suit. Correct?

14 A. Yes.

15 Q. You participated in discussions relating  
16 to that?

17 A. I don't recall if I participated in  
18 discussions.

19 Q. Okay. Did you vote in favor of the  
20 institution of the suit?

21 A. I don't recall how I voted.

22 Q. Did you oppose the institution of the  
23 suit?

24 A. I don't recall.

25 Q. So as you sit here today, you don't



1 remember what your position was on this lawsuit?

2 A. I don't recall.

3 Q. Okay. So you don't know your position.

4 A. I don't recall at this time.

5 Q. Well, did you think it was a good idea?

6 A. I don't recall.

7 Q. Did you think it was a good idea that

8 the town seek protection from builder's remedy

9 lawsuits?

10 A. I don't recall.

11 Q. Do you know what a builder's remedy

12 lawsuit is?

13 A. Yes.

14 Q. What is it?

15 A. It's when a builder files a lawsuit  
16 against a town because they want to build somewhere  
17 that the town doesn't want them to build.

18 Q. Because of Mount -- because of lack of  
19 Mount Laurel compliance. Right?

20 A. Yes, correct.

21 Q. And that was something -- you told me  
22 last time we spoke, that was something that you  
23 agreed the town should try to protect itself  
24 against. Would you agree with that?

25 A. Yes.

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1 MR. BOTTA: Against builder's remedy  
2 lawsuits?

3 MR. FIORENZO: Yeah, yeah, sure.

4 Q. And that's, in part, what this did, it  
5 sought repose, it sought protection from that.  
6 Correct? True?

7 (Jack Klugmann and Kevin Cowan enter the  
8 room.)

9 Q. True?

10 A. Say your question again?

11 MR. BOTTA: Can you just put on the  
12 record --

13 MR. FIORENZO: Can you read it back?

14 MR. BOTTA: -- who's here?

15 MR. FIORENZO: Yeah, Mr. Jack Klugmann  
16 and the other gentleman.

17 MR. COWAN: First name is Kevin Cowan,  
18 C-O-W-A-N.

19 MR. FIORENZO: Okay. With my client.  
20 They're representatives of my client.

21 MR. BOTTA: And he is who?

22 MR. FIORENZO: Mr. Cowan.

23 MR. BOTTA: Yeah, I know. Who is he?

24 MR. FIORENZO: With Accurate.

25 MR. BOTTA: Okay. The title, please?

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1 MR. FIORENZO: Why? Why do you need to  
2 know?

3 MR. BOTTA: Well, I don't know if he's a  
4 member of the company or not. He can't just show up  
5 if he's not a member of the plaintiff.

6 MR. FIORENZO: He works for the company.

7 MR. BOTTA: Okay. Put it on the record.

8 MR. FIORENZO: I just did.

9 MR. BOTTA: No, you didn't.

10 MR. FIORENZO: He works for the company.

11 MR. BOTTA: What's his title?

12 MR. FIORENZO: Don't know. Okay?

13 MR. BOTTA: Can you put your title on  
14 the record?

15 MR. FIORENZO: No, no, no, no, you don't  
16 respond. Don't respond to him. You don't get to  
17 question him.

18 MR. BOTTA: Then I want the record to  
19 reflect who is here and what their titles are in  
20 relation to the plaintiff.

21 MR. FIORENZO: And I just told you, and  
22 as far as I'm concerned, that's all I'm going to  
23 tell you about it.

24 MR. BOTTA: No, I want on the record who  
25 he is and who he is at present and if he's a

1 representative and what his title is so that it can  
2 be checked.

3 MR. FIORENZO: Right. And I'm declining  
4 to do anything more than what I just did, which I  
5 told you he works for the company.

6 MR. BOTTA: I want his name and address  
7 on the record.

8 MR. FIORENZO: His name is on the  
9 record. I just gave it to you.

10 MR. BOTTA: Well, spell it.

11 MR. FIORENZO: Spell the name. I don't  
12 know how you --

13 MR. COWAN: C-O-W-A-N.

14 MR. FIORENZO: Thank you.

15 MR. BOTTA: First name?

16 MR. COWAN: First name is Kevin.

17 MR. FIORENZO: Thank you.

18 Q. Okay. Can we -- do you remember the  
19 question?

20 A. No.

21 MR. FIORENZO: Okay. Let's go back.  
22 (The record is read by the reporter.)

23 A. Correct.

24 Q. Okay. So after this complaint was  
25 filed, and I want to take you now back, we were in

1 July of 2017 when you voted against the second  
2 amendment, do you remember shortly thereafter the  
3 lawsuit in the Superior Court was settled?

4 A. I don't think it was settled until I  
5 became mayor and we had to prove everything. I  
6 think there was a condition of settlement.

7 MR. FIORENZO: Pull it up, Steve.  
8 November 21, '17.

9 MR. KLEIN: This will be DD-11.

10 Q. This is a November 21, 2017, settlement  
11 agreement addressed to Wendy Rubinstein. She was  
12 counsel for Emerson. Correct?

13 A. Correct.

14 Q. And it's regarding In the Matter of the  
15 Application of the Borough of Emerson, Docket No.  
16 BER-L-6300-15.

17 So the first sentence says, The letter  
18 memorializes the terms of an agreement reached  
19 between the Borough of Emerson, the declaratory  
20 judgment plaintiff, and Fair Share through  
21 settlement.

22 So this is the settlement agreement reached  
23 between the parties. True?

24 A. Yes.

25 Q. Okay. So within a couple months of the

1 vote on the second amendment to the redevelopment  
2 agreement, this Mount Laurel case was settled, and  
3 you were aware of that at the time. Correct?

4 A. I don't recall.

5 Q. Well, this was presented to the  
6 governing body, including you, to determine whether  
7 Emerson was authorized to settle. True?

8 A. I don't recall. It was a long time ago.

9 Q. So do you deny that you voted on this?

10 A. I just said I don't recall specifically  
11 what you're saying.

12 Q. Did you have any objections to the  
13 proposed settlement?

14 A. I don't recall.

15 Q. Take a look at the agreement.

16 MR. FIORENZO: Give her a hard copy if  
17 you could, please.

18 MR. KLEIN: Sure.

19 Q. Here's a hard copy for you.

20 MR. FIORENZO: By the way,  
21 congratulations.

22 MR. KLUGMANN: Thank you.

23 Q. Okay. So in the settlement agreement --

24 MR. FIORENZO: What is it, Steve, DD-11?

25 MR. KLEIN: Yes.

1           Q.       DD-11, in the -- go back to the first  
2 page if you would. You're on the first page.  
3 There's a section that says Background. And it  
4 says, "Emerson filed the above-captioned matter on  
5 July 8, 2015, seeking a declaration of its  
6 compliance with the Mount Laurel doctrine and the  
7 Fair Housing Act," and I'll stop there. "Through  
8 declaratory judgment process, the Borough and FSHC  
9 agreed to settle the litigation and to present the  
10 settlement to the trial court with jurisdiction over  
11 this matter to review, recognizing the settlement of  
12 Mount Laurel litigation is favored because it avoids  
13 delays and the expense of trial and results more  
14 quickly in the construction of homes for  
15 lower-income households."

16           So does that refresh your recollection that  
17 this, in fact, was the settlement agreement reached  
18 between Emerson and the Fair Housing in connection  
19 with the pending litigation?

20           A.       I recall that this is the agreement. I  
21 don't recall how I voted.

22           Q.       Okay. The last page, which is page 10  
23 of the agreement before the exhibits, is signed on  
24 behalf of Emerson. Do you know who signed that?

25           A.       On page 10?

1 Q. Yeah, page 10.

2 A. It looks like it says Lou Lamatina.

3 Q. Okay. In the settlement agreement --

4 MR. FIORENZO: Go to paragraph 6,  
5 please, Steve.

6 Q. So paragraph 6 addresses certain parts  
7 of Emerson's affordable housing obligations. Were  
8 you aware of the provisions of paragraph 6 --

9 A. Yes.

10 Q. -- at the time?

11 There's also --

12 A. Actually, I don't know if I was at the  
13 time. I'm aware of them now.

14 Q. Okay. There's also a section 7.

15 MR. FIORENZO: Steve, could you scroll  
16 down to that.

17 Q. So as part of the settlement, it  
18 attempted to quantify what Emerson's affordable  
19 housing needs were in what's described as the "prior  
20 round." Do you know what that means?

21 A. Yes.

22 Q. What?

23 A. That means the amount of affordable  
24 units that already satisfied the obligation.

25 Q. Okay. And in addition to the prior



1 round, it then addressed -- it addressed the  
2 prospective need, and I want to have you take a  
3 look, please, at paragraph 8.

4 So paragraph 8 is the -- provides that Exhibit  
5 A -- as reflected in Exhibit A, those properties  
6 have a realistic development potential of 53 units  
7 and the RDP will be satisfied as follows, as will be  
8 more fully described in the Borough's Housing  
9 Element and Fair Share Plan.

10 So did you understand that this settlement  
11 agreement, among other things, settled and fixed the  
12 number of affordable units, thereby eliminating the  
13 potential of the court fixing a different amount?

14 A. Yes.

15 Q. Okay. And it then listed the various  
16 projects where the housing would be sited. Correct?

17 A. Yes.

18 Q. And it shows the second line is Block  
19 419 project, and that's the project in question.  
20 True? That's my client's property, Block 419.  
21 True?

22 A. Are you asking me or are you stating  
23 that?

24 Q. I'm always asking you, yeah.

25 A. It sounded like a statement.

1 Q. No. True?

2 A. Yes.

3 Q. Okay.

4 A. 15 percent.

5 Q. And it provides for 29 of the units of  
6 the affordable housing of the 53 units were going to  
7 be sited on the subject property. Correct? Yes?

8 A. Yes.

9 Q. So would you agree that Block 419  
10 comprised really the single largest component part  
11 of Emerson's affordable housing obligation,  
12 fulfillment of that obligation. Correct?

13 A. As presented, yes.

14 Q. Okay. And then there's an asterisk  
15 there down below, and it reflects that there's a  
16 minimum of 15 percent set-aside, 22 units with an  
17 option -- with an off-site provision for  
18 payment-in-lieu -- or payment-in-lieu for the  
19 remaining seven. So did you understand when this  
20 was settled, there were to be 29 affordable units --

21 A. 22.

22 Q. -- 22 would be on-site and seven would  
23 be off-site. Correct?

24 A. That there could be seven off-site.  
25 There didn't have to be. But they were supplying 29

1 of the units.

2 Q. Seven to be off-site at the election of  
3 the developer. Correct?

4 A. With an option for off-site.

5 Q. Yeah, yeah. Okay. And so that would be  
6 the 29. And it goes on to say, "If such option is  
7 exercised, the Borough will show at the midpoint  
8 review how it will provide a realistic opportunity  
9 for the remaining seven units, in accordance with  
10 the provisions of the agreement."

11 Now, did you engage in discussions with anyone  
12 about those seven units?

13 A. At what point?

14 Q. At any point. Well, let me -- at any  
15 point up through the institution of the suit here.  
16 Did you have discussions about the seven units with  
17 anyone?

18 A. Yes.

19 Q. With whom?

20 A. I think they presented a pseudo-plan to  
21 the Borough that they wanted to put seven units on a  
22 particular piece of land in the Borough.

23 Q. When? After the litigation or before?  
24 When I say litigation, this litigation, this  
25 lawsuit, before or after this suit.

1 A. I guess after.

2 Q. Okay. Prior to this suit, did you have  
3 any discussions or communications with anyone  
4 regarding the seven off-site units?

5 A. Did I have conversations?

6 Q. You, yes.

7 A. No.

8 Q. Okay. Were you aware of -- were there  
9 discussions about where those seven units would be  
10 located prior to the institution of the suit in this  
11 matter?

12 A. Can we take a break?

13 Q. Well, we're in the middle of a question.  
14 We can take a break. Just answer my question and we  
15 can take a break.

16 A. I think I'd like to take a break right  
17 now.

18 Q. Well, once you answer the question.

19 A. I'm going to go to the ladies' room  
20 right now.

21 MR. BOTTA: We'll read it back.

22 Q. You're walking out?

23 MR. FIORENZO: Let the record reflect --

24 A. I'm going to the ladies' room out of  
25 necessity.

1 MR. FIORENZO: Let the record reflect I  
2 asked the witness just to complete the answer to the  
3 question --

4 MR. BOTTA: Well, we've been going two  
5 hours plus, so.

6 MR. FIORENZO: -- and she just picked  
7 up -- she just picked up and walked out, because she  
8 is --

9 MR. BOTTA: We've been going two hours  
10 plus.

11 MR. FIORENZO: -- controlling how we  
12 proceed here apparently.

13 MR. BOTTA: She needed to go to the  
14 ladies' room.

15 MR. FIORENZO: Oh, come on. She could  
16 have answered the question and that's the way it  
17 works.

18 MR. BOTTA: She had to go to the ladies'  
19 room.

20 MR. FIORENZO: She's supposed to answer  
21 the question before she breaks.

22 MR. BOTTA: I don't talk about your  
23 bladder, don't talk about hers.

24 MR. FIORENZO: In Federal Court, that's  
25 how it works. You don't walk out in the middle of a

1 question. But this is Danielle DiPaola, so.

2 Okay. We might as well take a break.

3 (A break was taken at 12:05 p.m.)

4 (Deposition resumes at 12:15 p.m.)

5 MR. FIORENZO: Back on the record.

6 BY MR. FIORENZO:

7 Q. So we were discussing the 419 project,  
8 and I just want to make sure the record is clear.  
9 Do you recall any discussions at all at any meetings  
10 of the governing body regarding the terms and  
11 conditions of the settlement agreement?

12 MR. SEAMAN: At what point in time?

13 MR. FIORENZO: Prior to the execution of  
14 the settlement agreement, which is in 2017.

15 A. I don't recall.

16 Q. Before the settlement agreement was  
17 approved by the governing body back in 2017, did you  
18 understand the terms and conditions of the  
19 settlement?

20 A. I don't recall.

21 Q. You don't recall if you knew them?

22 A. I don't recall if I understood them  
23 fully.

24 Q. Okay. Did you have an opportunity to  
25 speak to anyone you wanted regarding the terms and

1 conditions of the proposed settlement?

2 A. I don't recall.

3 Q. Was a presentation made by the attorney  
4 for Emerson concerning the terms and conditions of  
5 the settlement?

6 A. I don't recall.

7 Q. Did you have any objections to the terms  
8 and conditions of the settlement agreement reached  
9 by Emerson with Fair Housing in the Mount Laurel  
10 case?

11 A. I don't recall.

12 Q. As you sit here today, do you have any  
13 objections to the settlement agreement?

14 A. I guess it was necessary.

15 Q. Okay. So I guess then the answer to  
16 that would be no, you don't have any objections  
17 'cause it was necessary?

18 A. At the point in time of this agreement,  
19 I guess the governing body felt that it was  
20 necessary.

21 Q. Well, I asked you about today and you  
22 just told me -- I asked if you had any objections as  
23 of today, and you said, I guess it was necessary.  
24 By that did you mean you don't have any objections  
25 today because it was necessary to do?

1           A.       I have the objection of including the 29  
2       units only for the same reasons I've been saying all  
3       morning.

4           Q.       Right. But they agreed to settle with  
5       those 29 units related to Block 419. You understood  
6       that. Correct?

7           A.       Yeah. I also agreed that 55 Emerson  
8       Plaza West was part of the agreement, and it didn't  
9       exist, they weren't deed-restricted until I became  
10      mayor.

11          Q.       Okay. But I'm not asking about that.

12          A.       I know. But you're asking me to think  
13      about what I did. I don't recall.

14          Q.       Okay. So did you have any objection --  
15      or do you have any objections today as to the terms  
16      and conditions of the settlement agreement?

17          A.       I don't know.

18          Q.       Well, take a look at it. It's in front  
19      of you. This is my opportunity to ask you that  
20      question.

21          A.       I guess I would say yes.

22          Q.       What are your objections --

23          A.       The fact that --

24          Q.       Let me finish. What are your objections  
25      as to the settlement agreement, DD-11, today?



1           A.       I think you knew that I objected to  
2     Block 419 because of the density of the project for  
3     the fourth story, so if I was going to have an  
4     objection, I would say that we could have had a  
5     better plan in order to put into the -- into this  
6     agreement.

7           Q.       Okay. So you have -- today you have an  
8     objection as to the settlement agreement to the  
9     extent it includes Block 419 as one of the sites for  
10    affordable housing. Is that correct?

11          A.       Because of its density and size.

12          Q.       I don't want to know because. Is that  
13    correct?

14          A.       Because of the density and size.

15          Q.       I don't want to know why yet. I just  
16    want you to confirm that you have an objection to  
17    Block 419 being included, and then I'll get to the  
18    reasons. Is that true?

19          A.       I don't know.

20          Q.       I thought you just told me that you had  
21    an objection --

22          A.       I'm saying the reason is because of the  
23    density.

24          Q.       You've got to let me finish, please.

25          A.       Yeah, but I was answering you what you

1 asked.

2 Q. No, no, no, I was in the middle of a  
3 question. Okay?

4 A. Okay.

5 Q. So as to the settlement agreement, do  
6 you or do you not have an objection to inclusion of  
7 Block 419 as a site for affordable housing in the  
8 settlement agreement, yes or no?

9 A. I guess I objected to it, but it's on  
10 specific instances that I keep on saying and you  
11 don't want to hear.

12 Q. I don't know what that means. Do you  
13 object to it as of today, including Block 419, or  
14 not?

15 A. I don't understand your question.

16 Q. My question is, Block 419 is in the  
17 agreement for 29 affordable units. Correct?

18 A. Yes.

19 Q. Do you object to the settlement  
20 agreement because it included Block 419 for the 29  
21 affordable units, yes or no?

22 A. I don't really understand what you're  
23 asking.

24 Q. What don't you understand about that  
25 simple question?

1 A. I just don't understand your question.

2 Q. Do you object to Block 419 being in the  
3 settlement agreement?

4 A. I don't know.

5 Q. Okay. You said a moment ago, I guess it  
6 was necessary. Do you recall that testimony?

7 A. I said I guess the governing body felt  
8 it was necessary.

9 Q. No, I think you said I guess it was  
10 necessary. But did you believe it was necessary to  
11 satisfy the 53 units?

12 A. I think it was necessary to come up with  
13 a plan to build affordable units in Emerson in order  
14 to satisfy the agreement with the court.

15 Q. But I didn't ask that, did I. I asked  
16 whether Block 419 was necessary in order to satisfy  
17 part of the 53 units.

18 A. I think the majority of the governing  
19 body felt that it was.

20 Q. I didn't ask about them though. I asked  
21 about you. Did you think it was necessary?

22 A. No.

23 Q. Okay. Did you offer or propose any  
24 other site for the 29 units?

25 A. I don't really think there was an option

1 for that.

2 Q. Okay. Did you have another site that  
3 you proposed is the question, not whether there was  
4 an option. Did you say to anyone, look, before we  
5 settle this thing and before we include Block 419,  
6 we should instead put it somewhere else, did you  
7 give another alternate location?

8 A. I don't know that I gave a specific, but  
9 I think that I said that this wasn't the only way to  
10 fulfill the obligation.

11 Q. Right. I appreciate that. That wasn't  
12 my question. Did you give another site in lieu of  
13 that to site -- to provide for the 29 units that  
14 would be lost if 419 was not part of the deal?

15 A. I don't --

16 Q. Did you give another site location?

17 A. I don't think that I had the knowledge  
18 of where there could be other sites.

19 Q. So is the answer then no?

20 A. Because as a single governing body  
21 member, I couldn't have the engineers and the  
22 planners work just for me to find another site.

23 Q. So I take it then the answer to my  
24 question is no, you didn't offer another site?

25 A. I think I suggested that there could be

1 other sites --

2 Q. I know that.

3 A. -- but nobody wanted to look into it.

4 MR. BOTTA: Let her finish.

5 Q. We keep going around in circles. We're  
6 wasting time. I know you said I kept suggesting.  
7 I'm asking, did you ever propose a specific site in  
8 lieu of Block 419, yes or no?

9 A. I don't recall.

10 MR. BOTTA: Joe, now you're raising your  
11 voice. Just talk normal.

12 MR. FIORENZO: I'm not. If I raise my  
13 voice, believe me, you'll know. That's not it.  
14 That's really not it.

15 MR. BOTTA: That is raising your voice.

16 MR. FIORENZO: Trust me, it's not.

17 Q. Did you know of another site that could  
18 house the 29 affordable units at the time this  
19 settlement agreement was entered into?

20 A. I don't recall.

21 Q. Did you know what other sites were  
22 considered by the Special Master appointed by the  
23 Court?

24 A. I don't recall.

25 Q. Did the Special Master appointed by the

1 Court consider other locations?

2 A. I don't remember.

3 Q. You voted against the settlement, didn't  
4 you?

5 A. I don't recall.

6 MR. FIORENZO: Pull that up, Steve.

7 MR. KLEIN: This will be DD-12.

8 MR. FIORENZO: Would you turn to section  
9 17.

10 Q. Okay. Here we are.

11 MR. BOTTA: What is this, please?

12 MR. FIORENZO: Yeah, these are minutes  
13 of -- what's the date again?

14 MR. KLEIN: November 21, 2017.

15 Q. So on November 21 of '17, there was a  
16 resolution proposed and voted on. The resolution  
17 was to authorize the settlement, agreement, which is  
18 the document we've been talking about, DD-11. And  
19 it appears from the record that everyone voted in  
20 favor of settling the dispute except for you, you  
21 voted no. Right?

22 A. Everyone always voted in favor of  
23 everything that Lou Lamatina presented.

24 Q. Great, but that wasn't my question  
25 though, was it?

1 A. Except for me.

2 Q. Thanks a lot, yeah, yeah. Yeah, that's  
3 great. Now could you answer my question? Everyone  
4 voted in favor but you, you voted no. Correct?

5 A. Everyone that was present, correct.

6 Q. You're the only no vote. Right?

7 A. Right, but there were only five  
8 council --

9 Q. Right.

10 A. -- members present.

11 Q. What was the reason why you voted  
12 against settlement --

13 MR. SEAMAN: Joe, let her finish her  
14 answer before you ask another question.

15 Q. What was the reason why you voted  
16 against the settlement agreement, let me finish,  
17 that was going to settle the litigation and provide  
18 Emerson with a judgment of repose and protection  
19 against builder's remedy? Give me your reasons.  
20 What was number one?

21 A. I can only say that I objected to the  
22 project at 419 because of its density and the fourth  
23 story and everything else that I objected about it,  
24 the eminent domain, everything.

25 Q. Okay. So the reason you voted against

1 it is you knew 419 was included as a core component  
2 part of the settlement. Correct?

3 MR. SEAMAN: Objection to form.

4 A. I guess I knew that.

5 Q. Okay. And you felt that it was too  
6 dense and you felt that you didn't like the fourth  
7 story as you told me before. Right?

8 A. Right.

9 Q. And so that was the reason you voted  
10 against it?

11 A. And I didn't like the component of  
12 eminent domain.

13 Q. Okay. That's the third reason.

14 A. Which looked like it was going to be  
15 used.

16 Q. Okay. And those were the reasons why  
17 you voted against the settlement agreement?

18 A. They are probably some of them. I don't  
19 recall specifically --

20 Q. Well, I want to know all of them.

21 A. I don't recall specifically --

22 Q. Okay. So let me --

23 A. -- why I voted no.

24 MR. BOTTA: Joe, let her finish.

25 MR. FIORENZO: She's not even trying.



1 MR. BOTTA: Objection.

2 MR. SEAMAN: Objection.

3 Q. Let's be clear. Just so you understand,  
4 this is your deposition, and it's my opportunity to  
5 discover facts in the case. So I need to know today  
6 if you -- tell me what you remember. Do you  
7 remember any other reasons other than you objecting  
8 to Block 419 for the reasons you stated, density,  
9 four stories, eminent domain, any other reason why  
10 you voted against the settlement agreement that you  
11 can recall sitting here today?

12 A. I don't recall.

13 Q. Okay. Did you understand that if the  
14 matter wasn't settled, there would be a trial?

15 A. I don't know if I knew that at the time.

16 Q. Did you understand that if it wasn't  
17 settled, fixing and limiting the numbers for  
18 affordable units, that there was exposure to Emerson  
19 of higher units imposed by the Court?

20 A. I don't recall what I remembered at that  
21 moment.

22 Q. Do you know that as of today?

23 A. I understand it today.

24 Q. Okay.

25 A. It's a long time ago, yeah.

1 MR. FIORENZO: Pull up the conditional  
2 compliance.

3 MR. KLEIN: This will be DD-13.

4 Q. So DD-13 is a January 25, 2019,  
5 Conditional Final Judgment of Compliance and Repose.  
6 Hold on one second.

7 So we're going to come back to DD-13 in a  
8 moment, but I want to show you something else before  
9 we discuss this.

10 MR. KLEIN: This will be DD-14.

11 Q. Okay. So after the settlement agreement  
12 was entered into signed on November 21, 2017,  
13 between Emerson and Fair Housing to settle the  
14 litigation, did you understand that there had to be  
15 a hearing in front of the Court for the Court to  
16 approve it?

17 A. I don't know.

18 Q. Because this was a Mount Laurel case  
19 with affordable housing, did you understand that it  
20 was required that the Court make a determination at  
21 a "fairness hearing" as to whether the settlement  
22 agreement was fair and reasonable and would allow  
23 Emerson to fulfill its obligations, did you  
24 understand that?

25 A. I don't recall.

1 Q. That was explained to you, was it not,  
2 back at -- prior to June 29, 2018?

3 A. I don't recall.

4 Q. Do you remember telling me that you knew  
5 there was going to be a hearing but they didn't tell  
6 you the exact date when the hearing was going to be?

7 A. Or where it was.

8 Q. Or where it was. Remember we went over  
9 that previously?

10 A. I remember that.

11 Q. So you knew about there was going to be  
12 a hearing, you just claimed that no one ever told  
13 you the specifics of when and where it was so you  
14 could go down to object if you wanted to. Correct?  
15 Remember telling me that? Is that true?

16 A. I don't recall.

17 Q. Okay. You don't remember that either?

18 A. I don't recall. There's been a lot of  
19 time in between a lot of this.

20 Q. Yeah, yeah. In any event, the Court  
21 conducted a fairness hearing, do you remember us  
22 discussing that the last time we sat down together,  
23 and that there were certain objectors who came down  
24 and actually objected to the settlement agreement,  
25 do you recall that, we talked about that?

1 A. I don't recall.

2 Q. Did you understand there was a fairness  
3 hearing?

4 A. I understand it now.

5 Q. Okay. And at the fairness hearing, did  
6 you understand that there were objectors -- first of  
7 all, there was a Special Master that was there  
8 testifying, there were objectors, 214 Kinderkamack,  
9 LLC, Dolores Della Volpe. Do you know who she is?

10 A. Yes.

11 Q. Did you ever speak to Ms. Volpe?

12 A. Yes.

13 Q. Did she own a business?

14 A. No.

15 Q. Was she involved -- how was she involved  
16 in any way with this project?

17 A. She owned a property within the  
18 redevelopment zone.

19 Q. Okay. She had a tenant on the site?

20 A. She had a tenant.

21 Q. Who was the tenant?

22 A. Cork & Keg.

23 Q. Okay.

24 A. And the cleaners.

25 Q. Those were the people that you used to

1 go --

2 A. Cork & Keg and the cleaners, not just  
3 Cork & Keg.

4 Q. Cork & Keg were the people we talked  
5 about, you used to see them all the time, you went  
6 in the store, bought things, interacted. Correct?

7 A. Just like I saw Billy and Sue all the  
8 time when I went into the cleaners.

9 Q. Sure. You knew everybody you told us.  
10 Right?

11 A. I do know all the businesses in town.

12 Q. I'm sure you do. So did you speak to  
13 Ms. Volpe about trying to get her to come down to  
14 the hearing to make an objection?

15 A. No.

16 Q. So you never spoke with her before this  
17 fairness hearing?

18 MR. SEAMAN: Objection to form.

19 A. I think I've spoken to her before, but  
20 not particularly about the fairness hearing, no.

21 Q. Did you speak to her about objections to  
22 the plan?

23 A. I believe the only conversation I ever  
24 had with -- well, I don't even know if it was  
25 Dolores Volpe, I think it was the daughter. I don't

1 know if Dolores was the daughter or the mother,  
2 because the mother inherited the building from her  
3 husband who passed, and the only conversation I  
4 believe I only had with Dolores is when she called  
5 to tell me that she had told Mayor Lamatina that she  
6 would put a second story on the Cork & Keg cleaners  
7 building, and he said, don't even try it, we're  
8 taking your property.

9 Q. Okay. So now that you've gotten that  
10 out, did you speak with Dolores in any way about the  
11 settlement agreement?

12 A. No.

13 Q. You didn't appear at the settlement --  
14 at the fairness hearing. Correct?

15 A. I don't think I understood at the time  
16 that I could.

17 Q. Right. I didn't ask the reason, but  
18 you've now confirmed you weren't there. Correct?

19 A. I was not there.

20 MR. FIORENZO: Scroll to the next page.

21 Q. So did your town attorney when the case  
22 was settled explain to the governing body as a whole  
23 that there would then have to be approval of the  
24 settlement agreement by the Court, did you know  
25 that?

1 A. I guess.

2 Q. Okay. And the Court had a hearing and  
3 they, according to the order, heard and received  
4 evidence, both documentary and witnesses, and  
5 considered the challenges of the objectors to the  
6 proposed settlement, including --

7 MR. FIORENZO: Steve, highlight that  
8 last paragraph, please. Can you make that a little  
9 bigger? Oh, never mind.

10 Q. It says, "The Court having heard and  
11 considered challenges argued by the objectors to the  
12 proposed settlement agreement, including the  
13 objectors' challenge to the realistic opportunity to  
14 provide housing for persons of low and moderate  
15 income, based on the objectors' contention that the  
16 Borough may not acquire the objectors' property or  
17 other properties within Block 419 for  
18 redevelopment."

19 MR. FIORENZO: Continue on, please.  
20 Stop there.

21 Q. And having considered all that, the  
22 Court ordered and found that, and then there's A, B,  
23 it identified the present need obligation of Emerson  
24 at twenty units. Do you see that?

25 A. Yeah. I don't know where you're going

1 with all of this.

2 Q. Well, I'm asking, did you understand  
3 that the Court then after this hearing made a final  
4 determination fixing the amount of affordable  
5 housing obligations, in other words, taking the  
6 numbers that had been proposed, and then this  
7 settlement reduced those numbers, did you understand  
8 that it was reducing the numbers?

9 A. I don't recall.

10 Q. Don't you recall your counsel at a  
11 hearing presenting and saying this is a good deal  
12 for the town and here's why?

13 A. I don't remember.

14 Q. Was the settlement recommended by  
15 counsel?

16 A. I don't remember.

17 Q. So you didn't understand that there was  
18 now going to be a cap or limit on what the COAH  
19 housing obligations were, you didn't know that?

20 A. I don't remember.

21 MR. SEAMAN: Objection to form.

22 A. I don't remember.

23 Q. Well, do you know that now?

24 A. I don't know. I think it's fair to say  
25 that when a lot of this was going on, I didn't get a



1 lot of one-on-one with our attorneys for  
2 explanations.

3 Q. I didn't ask that.

4 A. I was only picking up as much as I could  
5 and I voted the way I felt was the best interest of  
6 the Borough.

7 Q. I asked only did you know that now,  
8 today, as you sit in this room, that one of the  
9 things the Court-approved settlement did is it  
10 limited, reduced the number of affordable units  
11 Emerson would otherwise have to fulfill.

12 A. Yes, I just read it.

13 Q. Do you understand that now?

14 A. Yes, I just read it.

15 Q. Okay.

16 MR. FIORENZO: Continue scrolling down.  
17 Go to H, please.

18 Q. And it appears that the Court at the  
19 hearing specifically considered Block 419, and they  
20 found, "Upon the Special Master's report, testimony,  
21 and recommendation, that the settlement is fair and  
22 reasonable to low and moderate income persons, and  
23 the properties located within Block 419  
24 redevelopment project area are all 'necessary or  
25 useful' to provide low and moderate income housing."

1 Did you understand that the Court made a  
2 specific finding of fairness of the settlement  
3 agreement, and specifically that Block 419 was  
4 necessary or useful to satisfy the constitutional  
5 obligation, did you know that?

6 A. I understand reading that, that that was  
7 the Judge's opinion, yes.

8 Q. And that was the Judge's opinion back  
9 then on --

10 MR. FIORENZO: What's the date again  
11 Steve, January?

12 MR. KLEIN: June 29th, 2018.

13 Q. June 29th, 2018, that was the Judge's  
14 opinion back then. Right?

15 A. Yes.

16 Q. Okay. Now, after this occurred, after  
17 the fairness hearing and now the settlement  
18 agreement was approved by the Court, did you  
19 understand that there were things that needed to be  
20 done further by the town of Emerson in order to  
21 fulfill its obligation with respect to affordable  
22 housing, did you know that?

23 A. I don't recall.

24 Q. Well, you were on the governing body,  
25 weren't you?

1 A. I don't recall.

2 Q. Were you interested in monitoring what  
3 was going on with regard to satisfying the  
4 affordable housing obligations?

5 A. I don't recall what I was thinking at  
6 that time.

7 Q. So you have no recollection of what you  
8 knew and didn't know after the Court-approved  
9 settlement agreement with respect to Mount Laurel,  
10 you just have no recollection whatsoever?

11 A. At this time I can't tell you  
12 specifically what I thought after hearing about  
13 this.

14 Q. Okay. Well, sitting here today, what  
15 you know -- let's explore what you know today. You  
16 know today that after that settlement was approved,  
17 there then had to be certain things done, one of  
18 which was there had to be a Planning Board hearing  
19 where the plan was presented to the Zoning Board for  
20 approval of the Block 419 project. You were aware  
21 of that. Correct?

22 A. I guess.

23 Q. 'Cause you were there. Right?

24 A. I think so.

25 Q. You attended that.

1 A. I think I did, yeah.

2 Q. Is there any doubt you did?

3 A. What date was it? Was this the last  
4 meeting in December?

5 Q. December 2018, did you attend --

6 A. Yes, I was there.

7 Q. -- did you attend the Land Use Board  
8 hearing at which the Block 419 project was presented  
9 for approval?

10 A. Yes.

11 Q. Okay. And did you understand that that  
12 was being done to implement the terms of the  
13 settlement agreement approved by the Court?

14 A. I don't know if I knew that at the time.

15 Q. Do you know that now --

16 A. Yes.

17 Q. -- that it was being done -- yeah.

18 Okay. And, in fact, in addition to that, there were  
19 other things the settlement agreement required to be  
20 done, there had to be a Housing Element Plan  
21 adopted. Correct?

22 A. I don't recall.

23 Q. You don't remember anything.

24 A. I don't recall the process.

25 Q. Okay.

1 MR. KLEIN: DD-15.

2 Q. DD-15 is a Housing Element and Third  
3 Round Fair Share Plan. Have you seen this report  
4 before?

5 A. Yes.

6 Q. And it's prepared by Brigette Bogart.  
7 Who was she?

8 A. She was the planner for the Borough of  
9 Emerson?

10 Q. Okay. Before you fired her?

11 A. I fired her, yes, I did.

12 Q. Right. Yeah, I'm just trying to get a  
13 time frame. This was before she was fired by you  
14 when you came on.

15 A. She technically was not fired, she was  
16 just not reappointed.

17 Q. Fair enough.

18 A. But I think what you're getting at is I  
19 didn't agree with her work. I did not.

20 Q. I'm not getting at anything. I'm asking  
21 you a question.

22 A. Well, you said fired.

23 Q. I'm just asking you a question. You  
24 told me you didn't fire her. She wasn't  
25 reappointed. Okay. I'll accept that.

1           A.       You were a mayor. You know I can't  
2       single-handedly fire a professional, so don't put  
3       words in my mouth.

4           Q.       Yeah, I know. You didn't have any  
5       control over the instruments of government in  
6       Emerson at all, is that what you're saying? You had  
7       no influence over the instruments of government in  
8       Emerson, is that what you're saying?

9           A.       I don't understand your question when  
10      you say instruments.

11          Q.       You said, I couldn't do it. Are you  
12      saying that you, as the mayor, had no influence on  
13      whether to hire or retain professionals once you  
14      were elected mayor, is that your testimony here?

15          A.       I cannot fire a professional all on my  
16      own, you know that.

17          Q.       No, but you could influence who gets  
18      hired or not. Right?

19                   MR. SEAMAN: Objection to form.

20          A.       Influence?

21          Q.       Yeah.

22          A.       I think that we have discussions  
23      about --

24          Q.       Yeah.

25          A.       -- who should be hired and who shouldn't.

1 Q. Okay. But in any event, you got rid of  
2 Bogart.

3 MR. SEAMAN: Objection.

4 Q. Let's look at the report, DD-15. Did  
5 you review this report?

6 A. Parts of it.

7 MR. FIORENZO: Let's get the date,  
8 Steve. I can't see it at the top.

9 MR. BOTTA: That's from the court stamp.

10 MR. FIORENZO: Oh, yeah, yeah, yeah,  
11 yeah. Okay. That's the court stamp.

12 MR. KLEIN: December 6, 2018.

13 MR. FIORENZO: Okay. Right, on the  
14 bottom.

15 Q. Okay. So on the front page of DD-15, it  
16 indicates December 6 of '18. Do you see that?

17 A. I see it.

18 Q. That is the Housing Element Plan Third  
19 Amendment. Was there a hearing and discussion about  
20 this third amendment?

21 A. I don't remember.

22 Q. Did you participate in discussions  
23 regarding it?

24 A. I don't remember.

25 Q. Did you understand that -- so this is

1 page 22 of the -- Ms. Bogart's December 6 plan. And  
2 it provides, The development of Block 419 has a  
3 minimum set-aside of 22 units with an option for  
4 off-site provisions or a payment-in-lieu for the  
5 remaining seven units. If such option is exercised,  
6 the Borough will show at the midpoint review how it  
7 will provide a realistic opportunity for the  
8 remaining seven units in accordance with the  
9 agreement with Fair Share Housing.

10 Then it goes to state, "The Block 419 project  
11 is an integral component of the Borough's Fair Share  
12 Plan. Did you understand that 419 was an integral  
13 component of the Fair Share Plan?

14 A. That's what she wrote.

15 Q. Well, did you understand that to be the  
16 case and why it was so?

17 A. I understand it, but I didn't agree with  
18 it.

19 Q. But, again, I didn't ask if you agreed  
20 with it, I just asked if you understood it. Did you  
21 understand that it was an integral component part by  
22 providing 29 of the 53 affordable units in Emerson?

23 A. That was Brigitte's position.

24 Q. Okay. And you understood that that was  
25 the Court's opinion as well based on the fact that



1 they approved that site as necessary. Correct?

2 Useful and necessary. Right?

3 MR. SEAMAN: Objection to form.

4 Q. Did you understand the Court had so  
5 concluded as well?

6 A. I don't recall.

7 Q. Well, do you remember I showed you that  
8 the Judge said in his ruling, his order, which is --  
9 has the force of law, it's a judicial order, that  
10 419 was "both useful and necessary" to fulfill the  
11 affordable housing obligation?

12 A. Yes, but I think I answered --

13 Q. Okay.

14 A. -- that that was the Judge's opinion.

15 Q. So it just wasn't Ms. Bogart's opinion,  
16 it was also the Court's opinion and the Master's  
17 opinion that it was an integral component part of  
18 the Fair Share Plan. Correct?

19 A. I guess it's fair to say they all shared  
20 the same opinion, yes.

21 MR. FIORENZO: All right. So that's a  
22 good point, we'll stop for the lunch break, 'cause  
23 it's about 12:45. Let's go off the record.

24 (A luncheon recess was taken at 12:45  
25 p.m.)

1 AFTERNOON SESSION

2

3 (Deposition resumes at 1:25 p.m.)

4 MR. FIORENZO: All right. Let's go back  
5 on the record.

6 EXAMINATION BY MR. FIORENZO:

7 Q. So when we broke, we were discussing  
8 some of the events that occurred towards the end of  
9 2018. I want to --

10 MR. FIORENZO: Can you pull up E32,  
11 Steve?

12 MR. KLEIN: This will be DD-16.

13 Q. So it appears on December 4, 2018, there  
14 was an ordinance introduced which -- in the meeting  
15 of the Mayor and Council to dedicate Block 419, Lot  
16 7 to Emerson Redevelopers and also -- yeah, Emerson  
17 Redevelopers and also vacating Kenneth Avenue in  
18 Emerson. Do you remember that there was a meeting  
19 at which this issue was being discussed?

20 A. Is Block 7 the ambulance corps building?

21 Q. 419, Lot 7. You tell me. You're the  
22 mayor. I don't know.

23 A. I don't have the blocks memorized in the  
24 town.

25 Q. So you don't know?

1 A. (Shakes head.)

2 Q. Did you participate in this meeting?

3 A. Yes.

4 Q. Before voting on it, did you have a  
5 discussion about the proposed ordinance?

6 A. I don't recall.

7 MR. FIORENZO: Turn to the highlighted  
8 section, Steve.

9 Q. So there was a note in the minutes that  
10 you said to the governing body at the meeting that  
11 the governing body was "tying the hands of any  
12 future administration and said the process had been  
13 accelerated because of the upcoming change in  
14 government." Did you make such a statement?

15 A. Something to that effect, yes.

16 Q. So what actions do you feel were being  
17 taken at that meeting that would tie the hands of  
18 the future administration?

19 A. I don't remember specifically. You  
20 mentioned an ordinance that we introduced.

21 Q. Were there any actions that were taken  
22 in December of 2018 that you believe tied the hands  
23 of future administration?

24 A. Yes.

25 Q. What actions were taken that tied the

1 hands of future administration?

2 A. The approval of the third amendment of  
3 the redevelopment plan.

4 Q. When was that approved?

5 A. In December of 2018 after I was elected  
6 mayor.

7 Q. So you felt the approval of the third  
8 amendment tied the hands of the future  
9 administration? How so?

10 A. Because it was still a part of the  
11 redevelopment and it was showing that the project  
12 was going to move forward with an even larger piece  
13 of property.

14 Q. So the third amendment increased the  
15 size of the project?

16 A. I believe the third amendment is where  
17 the -- oh, no, the third amendment was the decrease  
18 in the amount of money for the infrastructure from  
19 seven hundred to like three hundred and something  
20 and the deadline for the ambulance corps.

21 Q. Okay. So you say the third amendment  
22 tied the hands of your incoming -- about to be  
23 incoming administration. Correct?

24 A. I think I was talking collectively of  
25 everything that had happened since the election.

1 Q. Okay. Well, I want to be more specific.  
2 Okay? When you said on December 4th, 2018, that the  
3 governing body should hold up so as not to tie the  
4 hands of the future administration, what were you  
5 asking them to hold up doing?

6 A. The approval of the redevelopment plan,  
7 the site plan.

8 Q. Well, that was before the Land Use  
9 Board, not the governing body. Correct?

10 A. And all of the agreements that we were  
11 voting on.

12 Q. Well, what agreement was being voted on  
13 that night?

14 A. I believe it was the third amendment to  
15 the redevelopment plan.

16 Q. So you felt the third amendment  
17 shouldn't be voted on. Correct?

18 A. I'd have to look at the whole agenda to  
19 refresh my memory.

20 Q. Well, okay. Do you remember what it is  
21 that you were saying would tie the hands of your  
22 administration --

23 A. I don't know what --

24 Q. Let me finish.

25 -- when you made that statement at the meeting

1 on December 4, 2018?

2 A. I don't recall at this time what I was  
3 referring to.

4 Q. So right then and there at that meeting  
5 on the agenda were two different things; number one,  
6 a resolution or an ordinance to vacate Kenneth  
7 Avenue. Do you remember that?

8 A. Not specifically.

9 Q. Do you know what the purpose of vacating  
10 Kenneth Avenue was?

11 A. Do I know what the purpose was?

12 Q. Yeah.

13 A. Yeah, they were giving the property to  
14 Accurate Builders.

15 Q. That was part of the Block 19  
16 development approved by the Court and later on by --  
17 and by the Special Master. Correct?

18 A. I guess.

19 Q. And that was part of what was included  
20 within the third amendment to the fair share plan.  
21 Correct?

22 A. I don't -- I don't recall.

23 Q. Okay. So other than the Kenneth  
24 Avenue -- vacating Kenneth Avenue, was there  
25 anything else that you were objecting to at that

1 meeting?

2 A. I don't recall specifically what I was  
3 objecting to. I was objecting in whole to all of  
4 the acceleration of the process to push this through  
5 before I took office.

6 Q. Well, acceleration of what process?  
7 What was being accelerated?

8 A. Everything having to do with building  
9 this building.

10 Q. Well, let's identify what it is you  
11 claim was being accelerated. Give me a list. What  
12 are they?

13 A. Particularly the plan going before the  
14 Land Use Board.

15 Q. Okay. So the site plan approval process  
16 before the Land Use Board. Correct? You wanted  
17 that to be put on hold. Correct?

18 A. I think it would have been in the best  
19 interest of the Borough to take it slow instead of  
20 approve it in less than an hour.

21 Q. Well, did you want it to be held until  
22 your administration was in place?

23 A. I think that probably would have been  
24 appropriate.

25 Q. Whether it would have or not, was that

1 what you wanted to see happen, you wanted it to be  
2 held --

3 A. I think that would have been  
4 appropriate.

5 Q. Okay. So is the answer to my question  
6 yes, you wanted the Land Use Board not to act until  
7 your administration was in place? Yes?

8 A. I think that was what was appropriate at  
9 the time, yes.

10 Q. So the answer is yes. Okay. We finally  
11 got to yes. And the answer is yes because you  
12 thought it was appropriate. Right?

13 A. I think everybody thought it was  
14 appropriate.

15 Q. I'm not asking about everybody. I'm  
16 asking you, Danielle DiPaola, did you think it was  
17 appropriate?

18 A. I think the majority of the Borough of  
19 Emerson thought it was appropriate.

20 Q. I didn't ask about the majority of the  
21 Borough, did I? I asked about you. Did you think  
22 it was appropriate?

23 A. My decisions are always made based on  
24 what I feel is best for the Borough.

25 Q. Again, I didn't ask that.



1 MR. BOTTA: Let her finish.

2 Q. I asked whether you thought it was  
3 appropriate.

4 MR. BOTTA: If you don't like her  
5 answer, just please let her finish.

6 MR. FIORENZO: No, no, she's not even  
7 trying.

8 MR. BOTTA: If you let her finish --

9 MR. FIORENZO: She's playing games.

10 MR. BOTTA: All right. Well, you've got  
11 to let her finish her answer.

12 A. I'm answering honestly.

13 Q. No, no, I don't care what anybody else  
14 wanted to happen. I don't care about the town. I  
15 don't care about others. I'm asking you personally.  
16 Did you believe it was inappropriate to go ahead  
17 with the Land Use Board application until your  
18 administration was in place, yes or no?

19 A. I don't recall.

20 MR. BOTTA: Objection, asked and  
21 answered.

22 Q. You don't remember?

23 A. I don't recall.

24 Q. Okay. Well, here you refer to tying the  
25 hands and the process being accelerated because of

1 the upcoming change. So the idea of the  
2 acceleration you told me was, number one, the Land  
3 Use Board, you thought the Land Use Board shouldn't  
4 be proceeding until the new administration was in  
5 place. Correct?

6 A. Say that again?

7 Q. You told me a moment ago, I asked you  
8 about what were you concerned about accelerating and  
9 you mentioned the Land Use Board.

10 A. Yeah.

11 Q. Okay. So you wanted the Land Use Board  
12 hearing not to take place in December 'cause it was  
13 being accelerated, instead you wanted it to wait  
14 until your administration was in place. Correct?

15 A. Yes.

16 Q. Okay. Anything else other than the Land  
17 Use Board application for site plan approval that  
18 you felt was being accelerated?

19 A. No, 'cause I didn't know about the  
20 change in ownership until the next meeting.

21 Q. Okay. All right. So --

22 MR. FIORENZO: Steve, can you just go  
23 back to the earlier part where it shows what 15,  
24 that ordinance is about.

25 Q. So the ordinance that you voted no on as

1 reflected in the minutes was the ordinance  
2 dedicating Block 419, Lot 7. See that?

3 A. Yeah.

4 Q. Okay. So why did you vote no?

5 A. I don't recall specifically what  
6 property is Block 419, Lot 7. If you could tell me  
7 whether it's Kenneth Avenue or whether it's the  
8 ambulance building or the parking lots or the  
9 commuter lot, I might be able to answer you better.

10 Q. Do you know?

11 A. I don't know what Block 7 is off the top  
12 of my head, no, I do not.

13 Q. So you don't know why you voted against  
14 it?

15 A. If you tell me what that Block 19 and 7  
16 refers to.

17 Q. Ma'am, I'm not in the business of  
18 telling you anything --

19 A. Then I don't know.

20 Q. -- 'cause I just --

21 A. My answer is I don't know.

22 Q. I ask questions and I expect answers.  
23 It's not my deposition. So I'm just finding out  
24 what you know and what you don't know. So if you  
25 don't know why it is you voted against this on

1 December 4 of 2018, just state that.

2 A. I don't know.

3 Q. Okay. So by the way, around this time,  
4 this is December 4, the election had occurred in  
5 early November of 2018. Right?

6 A. Uh-hum. Yes.

7 Q. And that's the election where you were  
8 elected as mayor. Correct?

9 A. Yes.

10 Q. And you were running a campaign  
11 throughout a number of months in 2018 leading up to  
12 it. Correct?

13 A. Yes. We've done all this before.

14 Q. Have we?

15 A. Yeah.

16 Q. In this case we've done it?

17 A. I don't know. I feel like we talked  
18 about this for two days already, but.

19 Q. This is the first time you're being  
20 deposed in this case.

21 A. Oh, okay.

22 Q. It's a different case.

23 A. Okay.

24 Q. Okay? This is the case --

25 A. I know.

1 Q. -- brought by my client against you.  
2 The other case had to do with a claim by the town.  
3 Okay?

4 And in connection with that, I want to show  
5 you a couple things.

6 MR. FIORENZO: Steve, could you pull up  
7 E026.

8 Q. So this is a newspaper article written  
9 by Stephanie, I can't make that out, of North Jersey  
10 published on November 8th, 2018.

11 MR. KLEIN: DD-17.

12 Q. So it's an article reporting your  
13 election as mayor. You saw that before. Right?

14 A. Yes.

15 Q. Ms. Noa --

16 A. Noda.

17 Q. Noda? She interviewed you after the  
18 election. Correct?

19 A. I guess. I don't remember.

20 Q. You spoke with her?

21 A. I don't remember if I spoke with her or  
22 if she took comments from something that I could  
23 have said.

24 Q. Okay. Let me ask you about some of the  
25 comments you made.

1 MR. FIORENZO: Could you make bigger  
2 the -- yeah.

3 Q. Just a couple comments. In the fourth  
4 paragraph. So the newspaper article states, Since  
5 2010, DiPaola has served the Borough as councilwoman  
6 but said she decided to run for mayor because she  
7 "didn't like the direction the town was going in,"  
8 with particular concerns about overdevelopment in  
9 the downtown. Did you make such a statement to the  
10 reporter on that day?

11 A. I don't know if I made it specifically  
12 to the reporter, but it's in quotes, so I must have  
13 said it.

14 Q. Okay. You don't deny making the  
15 statement in quotes, do you?

16 A. I don't remember.

17 Q. My question is, you don't deny it, do  
18 you?

19 A. I --

20 Q. You don't recall, but you don't --  
21 you're not denying that you made the statement, you  
22 just don't remember one way or the other?

23 A. I don't know if I said exactly that, but  
24 it's in print.

25 Q. Right. And that's why I'm asking the

1 follow-up question. You said --

2 A. I --

3 Q. Listen to me. You don't remember, but I  
4 take it from I don't remember you're saying you  
5 don't remember if you said it or you didn't say it,  
6 but you're not denying that you made the statement  
7 to the reporter, you just don't remember. Correct?

8 A. I'm saying that I don't know if that's  
9 exactly what I said, but that I see it's in quotes,  
10 and I don't remember when I said it, if I said it,  
11 or who I said it to.

12 Q. You still haven't answered my question  
13 though. Do you deny making the statement to the  
14 reporter, yes or no?

15 A. I deny saying it to the reporter 'cause  
16 I don't think I said it to a reporter.

17 Q. I just need to know if I have to call  
18 the reporter at the trial to tell us that you said  
19 that. Are you denying you said that to her?

20 A. I don't know when I said that.

21 Q. Did you say it to her, what she put in  
22 quote?

23 A. I do not believe I said anything  
24 specifically to the reporter. I do not think I  
25 spoke with her. I don't recall.

1 Q. So you're now telling me you don't think  
2 you spoke to the reporter? I'm confused. Are you  
3 telling us now under oath you don't think you even  
4 spoke to this reporter --

5 A. I don't recall if I --

6 Q. -- who quoted you?

7 A. -- specifically spoke to that reporter  
8 or if I said that at a meeting and she took my quote  
9 from a meeting.

10 Q. Do you deny making the statement --

11 A. I don't --

12 Q. Let me finish. You're interrupting.  
13 Do you deny making the statement irrespective  
14 of where or when it was said?

15 A. I don't know. Can you tell me when I  
16 said it?

17 Q. Again, you don't get to ask me  
18 questions, I get to ask you questions. Okay? I'm  
19 simply asking you, at any time do you deny that you  
20 made the statement in quotes that the reporter said  
21 you made, do you deny that?

22 A. I don't remember.

23 Q. Okay. But you don't deny it.

24 A. I don't remember.

25 Q. Okay. But you don't deny it?



1 MR. SEAMAN: Objection to form.

2 A. I don't remember.

3 Q. Okay. Are you saying it didn't  
4 happen --

5 A. I don't remember.

6 Q. -- or you don't recall one way or the  
7 other?

8 A. I don't remember.

9 Q. Well, I'm trying to find out what you  
10 mean by that. When you say you don't remember, that  
11 means it could have happened but you don't recall?

12 A. I don't remember.

13 MR. SEAMAN: Objection to form.

14 Q. Yeah, I know, but does that mean you  
15 don't recall whether you did it or not?

16 A. I don't remember.

17 Q. You're not going to answer my question?

18 A. I don't remember.

19 Q. Are you intentionally not answering my  
20 questions now?

21 A. I do not remember.

22 Q. Yeah, I know, but do you mean by that  
23 that it might have happened, it might not, you just  
24 don't recall?

25 A. I don't remember.

1 Q. Okay. So we'll get the reporter in.  
2 We'll go through that exercise since that's what you  
3 want us to do. You don't remember -- you don't even  
4 remember speaking to her, do you?

5 A. I don't remember if I spoke directly to  
6 her.

7 Q. So let's go down and see if you remember  
8 anything else that you said to this reporter.

9 So did you ever say to anybody that you didn't  
10 like the direction the town was going in?

11 A. I don't remember.

12 Q. Is that something that you believe, that  
13 you didn't like the direction the town was going in?

14 A. I don't remember what I felt at that  
15 time.

16 Q. Did you like the direction the town was  
17 going --

18 A. I don't --

19 Q. Hold on, let me finish. You keep  
20 interrupting me.

21 A. I know, but you're badgering --

22 Q. Don't interrupt me, please.

23 A. Okay. Don't badger me.

24 Q. Please don't interrupt me. Okay?

25 Did you like the direction the town was going

1 in under Mayor Lamatina?

2 A. I didn't like the way Lou Lamatina acted  
3 as mayor.

4 Q. Did you like the direction the town was  
5 going in with respect to the development downtown or  
6 the Block 419 project, did you like that?

7 A. Not particularly.

8 Q. Okay. So to the extent the reporter  
9 said you told her you didn't like the direction the  
10 town was going in, that sounds like it was, in fact,  
11 your position back then. Correct?

12 A. Say that again?

13 Q. Was that, in fact, your position  
14 generally back then, you didn't like the direction  
15 of the town?

16 A. I think that's why anyone runs.

17 Q. Well, then why is it so hard for you to  
18 say that?

19 MR. SEAMAN: Objection.

20 Q. It's obvious that that -- what the  
21 answer is. So you didn't like the direction the  
22 town was going in, and in particular you didn't like  
23 the overdevelopment of the downtown. True?

24 A. I didn't like the density of the  
25 downtown.

1 Q. Right. Which had to do with your  
2 concerns about overdevelopment. Correct?

3 A. As it related to the density and the  
4 height of the buildings they were putting in.

5 Q. So it sounds like she was accurately  
6 reflecting what your position was back then. Am I  
7 wrong?

8 A. You keep asking me if I told her that  
9 and I've told you several times --

10 Q. I didn't ask you that.

11 MR. SEAMAN: Let her finish.

12 Q. That's not the pending question.

13 A. Now you're yelling at me.

14 Q. I said -- well, you're not even trying  
15 to answer. You're making a mockery out of this,  
16 honestly. I'm asking you a simple question. And  
17 the simple question is, regardless of whether you  
18 remember if you said that, it sounds from what you  
19 described to me that that statement accurately  
20 reflected generally your sentiments that you didn't  
21 like the direction of the town because of  
22 overdevelopment. Correct?

23 A. Because of the density that  
24 overdevelopment was bringing with the height.

25 Q. Yes? Is that right?

1           A.       I don't really know what you're trying  
2       to get me to agree to, 'cause you've asked me so  
3       many different questions around that -- those  
4       quotes.

5           Q.       I can't wait to when you're going to  
6       have to answer questions. This is ridiculous, but  
7       okay. You don't want to answer that question then.  
8       Right?

9                   MR. SEAMAN: Objection.

10                  MR. BOTTA: She answered it.

11           A.       I answered it as best I could.

12                  MR. FIORENZO: She's not answering the  
13       question. You know it and you know it. She's not  
14       even trying at this point.

15                  MR. BOTTA: She answered the question.  
16       Maybe you don't like how she answered it.

17                  MR. FIORENZO: Yeah.

18                  MR. SEAMAN: I disagree with your  
19       characterization. Please ask another question.

20           Q.       You want to play that game?

21           A.       Play what game?

22           Q.       The game you're playing right now where  
23       I ask you questions and it takes five minutes and we  
24       go around in circles and then you don't answer, is  
25       that what you want to do here today?

1 MR. BOTTA: Is that a question?

2 MR. FIORENZO: Yes, it is.

3 MR. SEAMAN: Objection.

4 MR. FIORENZO: It is a question.

5 MR. BOTTA: Objection.

6 Q. Is that what you want to do?

7 A. I'm answering to the best of my ability.

8 Q. Yeah. Okay. Well, let's take a look at  
9 what else you said.

10 MR. FIORENZO: Go to the next one.

11 Q. The reporter goes on to report based on  
12 a discussion she claims to have had with you, On a  
13 larger scale, DiPaola, who served on the Borough's  
14 Land Use Board in the past, would like to ensure  
15 development in the downtown is done in a "reasonable  
16 way that isn't four story buildings." Did you make  
17 that statement to the reporter in words or  
18 substance?

19 A. Again, does it say somewhere in the  
20 article that she interviewed me? Because I don't  
21 know if I said that specifically to her.

22 Q. Can you answer my question? I asked if  
23 you said that to the reporter in words or in  
24 substance.

25 A. I could have. I don't remember.

1 Q. And the reason you could have is because  
2 it accurately reflected your position at that time.  
3 Correct?

4 A. Right, which is why I don't know when I  
5 could have said it. I don't know if it was in an  
6 interview or not.

7 Q. So was the answer to my question right,  
8 it did accurately reflect your position at that  
9 time?

10 A. I don't know if I said that, but I would  
11 say that it does seem to comply with what my  
12 reasoning was at the time.

13 Q. Okay. And, in fact, you told me earlier  
14 that, you know, your objections many times in these  
15 votes against the redevelopment plan and the  
16 amendment was you had concerns about the four-story  
17 building on the site. Correct?

18 A. Yes, I was opposed to four-story  
19 buildings.

20 Q. And she specifically says -- she says  
21 you told her that when she wrote the article.

22 MR. SEAMAN: Objection to form.

23 A. I don't see anywhere where she says I  
24 told her. That's what I'm really --

25 Q. Do you know what quotations mean?

1 A. Yes, but --

2 Q. What do quotations generally mean? What  
3 do quotations generally mean?

4 A. It means that somebody believes I said  
5 something --

6 Q. Right.

7 A. -- but I have no proof that I said it or  
8 when or to who.

9 Q. Well, I guess the proof we have is the  
10 reporter saying she spoke to you and then putting  
11 your statement in quotes, and I'm simply asking if  
12 you will confirm here on the record that you said  
13 that to her or whether we've got to go through the  
14 exercise of bringing the reporter in to say you told  
15 her that.

16 A. I don't see anywhere in the article that  
17 I could see that it said I spoke to her and she  
18 interviewed me.

19 Q. Well, when she did a newspaper article  
20 and quoted you, why did you think she was quoting  
21 you?

22 A. Oh, my God.

23 MR. SEAMAN: Objection to form.

24 A. Reporters quote people all the time when  
25 they say things at meetings and whatnot. You don't



1 have to have an interview in order to be quoted.

2 Q. Okay. Well, did you make that statement  
3 either in an interview, in a public setting,  
4 anywhere, that you didn't -- that you want to ensure  
5 the development of the downtown is done in a  
6 reasonable way that "isn't four-story buildings,"  
7 have you ever made that statement in public?

8 A. I don't --

9 MR. SEAMAN: Objection to form.

10 A. I don't recall. I could have. I don't  
11 recall.

12 Q. Well, you could have because you've said  
13 that here today. Right? It reflects your position  
14 back at that time when you ran for mayor. Correct?

15 A. I think I've stated that I was against  
16 the four-story building.

17 Q. And that was the position you ran on.  
18 You told people that, didn't you?

19 A. That I was against four stories.

20 Q. You were against the overdevelopment in  
21 downtown and it had to be reasonable and you didn't  
22 think a four-story building was reasonable, that was  
23 what you ran on, wasn't it?

24 A. I don't think that a four-story building  
25 was reasonable in the downtown.

1 Q. I didn't ask that. Did you run on that?  
2 Did you tell people during your campaign that your  
3 position was that the downtown was being  
4 overdeveloped and Block 419, which had four stories,  
5 was overdevelopment, that was your position.  
6 Correct?

7 A. I could have. I ran on a lot of  
8 different platforms.

9 Q. You could have. You did, didn't you?  
10 Do you deny making that statement during your  
11 campaign?

12 A. I haven't read anything from that  
13 campaign in years.

14 Q. Do you deny making the statement during  
15 your campaign that you were running on  
16 overdevelopment and that 419 was the centerpiece of  
17 that, do you deny that?

18 A. No.

19 MR. FIORENZO: Okay. Pull up the next  
20 one.

21 Q. You're right, it is ridiculous. I  
22 haven't seen anything like this in a really long  
23 time. The good news is you can't do this stuff when  
24 we get to trial. Okay? We'll have a day when  
25 you're going to have to really answer these

1 questions.

2 Okay. The article goes on to have further  
3 quotes, which say, "Everyone has this idea I'm  
4 against development, but I'm not against it, said  
5 DiPaola. I'm against eminent domain. I'd like to  
6 move forward and bring positive change to the  
7 downtown."

8 Did you tell the reporter you were against  
9 eminent domain?

10 A. I think I've told you several times I  
11 don't know if I specifically spoke to the reporter.

12 Q. Okay. Whether you spoke to her directly  
13 that day or spoke in some other context, your  
14 position was, as you've told us today, you're  
15 against eminent domain. Right?

16 A. Yes, I am against eminent domain in this  
17 instance, correct.

18 Q. Well, you say, I'm against eminent  
19 domain. You didn't say in any instance there. You  
20 just said you're generally -- in fact, you told me  
21 philosophically you were opposed to eminent domain.  
22 Remember that?

23 A. At the time, maybe I was.

24 Q. As a general principle, even unrelated  
25 to this, you didn't like eminent domain

1 philosophically. It was against what your belief  
2 system was. Correct?

3 MR. SEAMAN: Objection to form.

4 A. As it related to Emerson, correct.

5 Q. Then she quotes you saying, She would  
6 like to move forward and bring positive change to  
7 the town. Was that also your position, you wanted  
8 to bring "positive change to the downtown"?

9 A. I don't recall exactly what my state of  
10 mind was then, but --

11 Q. Well, when you ran --

12 MR. SEAMAN: Joe.

13 Q. Remember when you ran?

14 MR. SEAMAN: Joe, she said but, then you  
15 interrupted her. Please let her finish her answer.

16 Q. Go ahead.

17 A. But I believe change was needed in  
18 Emerson, but I don't think that it needed the  
19 density that was being brought forth with 419.

20 Q. So when you talk about positive change  
21 to downtown, did you want positive change to the  
22 downtown area?

23 A. Sure.

24 Q. What did you want to have changed in the  
25 downtown?

1 A. A smaller scale project.

2 Q. Well, are you referring to 419?

3 A. Any project that was smaller scale that  
4 was able to satisfy the affordable housing.

5 Q. There was only one downtown and that was  
6 419. Correct?

7 A. Right.

8 Q. So when you talk about positive change  
9 and I asked you what did you want to have changed,  
10 you wanted to change 419. Correct?

11 A. I think it also says that I'm not  
12 against -- what did I say?

13 Q. Ma'am, don't go off on things I'm not  
14 asking you about. I'm asking you when you refer to  
15 change, the positive change in downtown, what you're  
16 referring to is change to the Block 419 project.  
17 Correct?

18 A. I don't know if I was specifically  
19 speaking to Block 419.

20 Q. Well, there's no other project downtown  
21 you told me other than 419 that was involved in  
22 development at that time.

23 A. There's a lot of changes that could  
24 happen to Emerson in the downtown.

25 Q. What was the change you were asking for

1 in the downtown when --

2 A. I don't --

3 Q. Let me finish.

4 When you ran and you went to all your  
5 constituents and you talked to them about why you  
6 wanted to be mayor, did you tell them that you  
7 wanted to change the 419 project downtown in words  
8 or substance? Did you convey that to them?

9 A. I don't think I did.

10 Q. Are you sure you didn't or you don't  
11 think you did?

12 A. No, I think people asked me to stop it,  
13 they didn't ask me to change it. They asked me to  
14 stop it. They asked me --

15 Q. Well, you wanted change.

16 A. -- to bring down -- that's one quote. I  
17 don't know what I was referring to that moment.  
18 There's also the opposite side of the street that I  
19 could bring positive change to.

20 Q. So let me finish with this. So you're  
21 telling us here under oath you don't know what was  
22 meant when you said you wanted to bring positive  
23 change to downtown, you don't know what you wanted  
24 to change, is that your testimony under oath?

25 A. You're trying to say that I wanted to

1 change --

2 Q. Just answer the question.

3 A. -- the plan.

4 Q. Just answer the question.

5 A. I didn't say --

6 Q. Just answer the question.

7 A. Well, I can't answer --

8 Q. Is that your testimony?

9 A. -- unless you're going to let me speak.

10 Q. No, no, no. Is that your position, that  
11 when you talked about change downtown, that you  
12 don't remember what it was you wanted to change?

13 A. No, those -- that box that you've  
14 highlighted to me seems like I was speaking in a  
15 generality.

16 Q. Okay.

17 MR. KLEIN: This is DD-18.

18 Q. Okay. So DD-18 is another news article,  
19 this one 12/29/21.

20 MR. KLEIN: That's when it was printed.

21 Q. Oh, I'm sorry. What's the date? The  
22 Pascack Press and Northern Valley Press. Do you  
23 know that newspaper?

24 A. Do I know the newspaper?

25 Q. Yeah, do you know of that newspaper?

1 A. Yeah.

2 Q. And do they service the Emerson area?

3 A. Yes.

4 Q. Okay. And have you spoken with  
5 representatives of the press from that paper from  
6 time to time?

7 A. At times I have.

8 Q. Do you know John Snyder?

9 A. I know John Snyder.

10 Q. Have you spoken to John Snyder from time  
11 to time where he was asking you questions relating  
12 to Emerson?

13 A. Yeah, but I couldn't tell you  
14 specifically when.

15 Q. Okay. Did you speak to John Snyder  
16 after your election as mayor?

17 A. I don't recall.

18 Q. Do you deny you spoke to him?

19 A. I don't recall.

20 Q. Okay. Did you -- according to  
21 Mr. Snyder, he wrote a newspaper article here and he  
22 said that --

23 MR. FIORENZO: Well, go back to the  
24 paragraph before that, please.

25 A. Well, there it says, Told Pascack Press,



1 so I would say yes, I spoke to him.

2 Q. Okay. Great.

3 A. It didn't say that in the other article.

4 Q. Fair enough. So you spoke to him.

5 That's good.

6 MR. FIORENZO: So let's go, Steve, to  
7 where it says, A vocal critic.

8 Q. In the article he writes, after  
9 apparently speaking to you, he says, "A vocal critic  
10 of elements of an ambitious mixed use redevelopment  
11 plan taking shape under Lamatina" -- by the way,  
12 that ambitious mixed use redevelopment plan, do you  
13 know what he's referring to?

14 A. I guess he's talking about 419.

15 Q. You guess. Is there any ambitious mixed  
16 use redevelopment plan that was taking shape under  
17 Lamatina other than the Block 419 development?

18 A. I don't know. There's a Valero that's  
19 been under construction.

20 Q. Is there any doubt in your mind what  
21 he's referring to there? 'Cause he talked to you  
22 about it when he interviewed you. Right?

23 A. I guess.

24 Q. Okay. You guess. And he goes on to  
25 say, She, meaning you, called your November 6

1 election "a referendum on overdevelopment." So what  
2 did you mean by that?

3 A. I think what I was trying to invoke to  
4 the reporter was that by me and my slate winning, we  
5 were opposed to the fourth story, we were opposed to  
6 the density, we were opposed to the eminent domain,  
7 and that the sentiment in town was that this project  
8 was overdevelopment, and that by winning, we were  
9 sending a message to Lou Lamatina and his cohorts  
10 that Emerson did not want overdevelopment.

11 Overdevelopment. Not didn't want -- not want  
12 development, they didn't want overdevelopment.

13 Q. So by overdevelopment, were you  
14 referring to the 419 project?

15 A. Any overdevelopment.

16 Q. Were you referring to the 419 project?

17 A. Any overdevelopment.

18 Q. Were you referring to the 419 --

19 A. Any overdevelopment.

20 Q. Were you referring specifically to the  
21 419 project, which was the ambitious mixed use  
22 redevelopment plan taking shape under Lamatina?  
23 That's what's being discussed in that sentence of  
24 the article. Correct?

25 A. I think it was a referendum on any

1 overdevelopment that could happen under a Lamatina  
2 administration --

3 Q. Right.

4 A. -- and that is why the people voted for  
5 us in order to do more sensible decisions for our  
6 downtown.

7 Q. So what more sensible decision did you  
8 want to do for the downtown --

9 A. Eliminate four-story.

10 Q. Let me finish. You keep interrupting me  
11 time and time again.

12 A. I thought you were finished.

13 Q. Why?

14 A. I thought you were finished.

15 Q. Why?

16 MR. BOTTA: Mutual combatants here on  
17 interrupting.

18 Q. Why is that?

19 A. I thought you were finished.

20 Q. You didn't think I was finished. I was  
21 in the middle of a sentence. I speak pretty rapidly  
22 and I don't pause, so you knew exactly what I was  
23 doing. You cut me off. Please don't do that.

24 Okay? Would you agree not to cut me off?

25 MR. BOTTA: That's not a deposition

1 question. Move on.

2 MR. SEAMAN: Please ask a valid  
3 question.

4 Q. So you won't agree not to cut me off?

5 MR. BOTTA: Objection.

6 Q. I'm giving you an instruction not to cut  
7 me off as I did at the beginning of the deposition.  
8 Will you comply with that request?

9 A. I think you're trying to intimidate me  
10 is what I think is going on.

11 Q. Why is that? 'Cause I'm asking you not  
12 to be so rude as to interrupt me?

13 A. Well, now your voice is being raised,  
14 so.

15 Q. It's not being raised at all. That's an  
16 utter fabrication. It's a lie. Why are you doing  
17 that?

18 MR. BOTTA: Okay. Let's just move on.

19 Q. Why do you do these things?

20 MR. BOTTA: Can you just -- Joe, can you  
21 just ask questions.

22 MR. FIORENZO: Yeah. That's what I'm  
23 trying to do.

24 MR. BOTTA: So ask questions and let her  
25 answer.

1 MR. FIORENZO: If your client would let  
2 me ask them without interrupting me and without  
3 making false statements on the record about me  
4 raising my voice or not raising my voice. Why do  
5 you do these things, ma'am? I don't understand.

6 MR. BOTTA: Okay.

7 Q. Okay.

8 MR. SEAMAN: All right, Joe. Please ask  
9 a question.

10 Q. Will you abide by my request not to cut  
11 me off?

12 MR. SEAMAN: And, Joe, will you abide by  
13 our request not to cut her off in her answers?

14 MR. FIORENZO: Of course, yeah. Sure.

15 MR. SEAMAN: You haven't been doing a  
16 hundred percent of that either.

17 MR. FIORENZO: Oh, stop, will you, stop.  
18 You know that's not true.

19 MR. SEAMAN: I know it's absolutely  
20 true.

21 MR. FIORENZO: Well, you've objected  
22 maybe two or three times, that's all I know. She's  
23 cutting me off every time.

24 Q. Okay. So you want to play that game,  
25 we'll play that game. I know your game at this

1 point.

2 So when these newspaper articles were written  
3 then and you referred to a referendum on  
4 overdevelopment, in fact, that was part of your  
5 campaign pledge. Correct? That the town was being  
6 overdeveloped. Correct? That's what you ran on.  
7 Right?

8 A. Yes.

9 Q. And you ran specifically on the 419  
10 project. You said, This project being -- taking  
11 shape under Lamatina was bad for Emerson and it  
12 constituted overdevelopment, as you told me today,  
13 too high, too dense. That's what you told people as  
14 your campaign. Correct?

15 A. I didn't have to tell anybody that.

16 Q. Did you tell them that?

17 A. They told me that.

18 Q. Did you tell them?

19 A. I didn't have to tell people --

20 Q. No, no, no. Did --

21 A. -- it was overdevelopment.

22 Q. Did you --

23 A. They told me.

24 Q. Did you ever tell people that?

25 A. I didn't have to.

1 Q. So you never told anybody that, is that  
2 it?

3 A. I don't recall.

4 Q. Okay. So you never told anybody Emerson  
5 was being overdeveloped with 419, they told you, is  
6 that your position?

7 A. You're saying that I went door to door  
8 telling people that Emerson was being overdeveloped.

9 Q. No, I'm asking, did you tell people when  
10 you campaigned, door to door, in campaign  
11 literature, or otherwise, that Emerson was being  
12 overdeveloped, and 419 was a perfect example, this  
13 is Lamatina's creation, throw him out. That was  
14 your position, wasn't it?

15 A. Yes.

16 Q. Okay. That wasn't hard.

17 Now, with respect to the rest of this article,  
18 you go on to say --

19 MR. FIORENZO: Scroll down, Steve, to  
20 here.

21 Q. He's now referring -- in the article he  
22 says, Later in the day, she added, "The people of  
23 Emerson have spoken. It is apparent that the people  
24 have serious concerns about the direction the town  
25 was taking. I would ask the governing body, out of

1 respect to the voters, take no further action on  
2 redevelopment until January." He quotes you there.  
3 Is that an accurate quote of your position?

4 A. I would say it's an accurate sentiment.

5 Q. Okay. So you wanted no further action  
6 to be taken regarding the development of the 419  
7 project until January when you came in office.  
8 Right?

9 A. Yes.

10 Q. So when you ran -- by the way, did you  
11 have campaign literature when you ran?

12 A. Yes.

13 Q. And does that campaign literature set  
14 forth what you consider to be the issues in town?

15 A. I haven't looked at the literature in  
16 five or -- five years, six years.

17 Q. What was the number one issue that you  
18 were advocating as you campaigned?

19 A. Getting rid of Lou Lamatina.

20 Q. And why was that?

21 A. Because he was a menace to the town.

22 Q. Why was that?

23 A. Have you ever met him?

24 Q. Again, you don't get to ask me  
25 questions. You should know that by now. You



1 just -- you're here to answer them. Do you  
2 understand that? I know you're a mayor and you  
3 probably think that gives you special dispensation.  
4 It really doesn't?

5 A. No, I don't.

6 Q. Good. So can you answer my question  
7 now?

8 A. There were a lot of things that Lou  
9 Lamatina was doing that nobody in town agreed with.

10 Q. Well, was one of them Block 419?

11 A. One of them was the pushing through of  
12 Block 419 to the cries of the people at the meetings  
13 asking him not to go forward with it.

14 Q. So you said he was pushing it through?  
15 Right?

16 A. Signing an agreement on December 31st  
17 before you're out of office at midnight, I consider  
18 that pushing it through.

19 Q. So you consider Mr. Lamatina pushing  
20 through the 419 development plan?

21 A. Yes. He wanted it. It was his dream.

22 Q. Oh, it was his dream. And do you know  
23 why it was his dream?

24 MR. SEAMAN: Objection to form.

25 A. I don't know what he was thinking.

1 Q. So you believe it was Lamatina's dream  
2 to develop the downtown with Block 419, is that your  
3 testimony? Dream?

4 A. Maybe it was the wrong word dream.

5 Q. Okay.

6 A. I don't know.

7 Q. So is it possible that the 419 project  
8 went forward in the way it did because the town  
9 settled their suit with Fair Housing, is that a  
10 possibility?

11 MR. SEAMAN: Objection to form.

12 A. I think I've already said that there  
13 could have been other ways --

14 Q. I didn't ask that.

15 A. -- to settle that.

16 Q. I didn't ask other ways. I'm asking  
17 whether it's possible that the reason why this  
18 project went forward was not because it was  
19 Lamatina's dream, but because the town had a duty  
20 and an obligation under the settlement agreement  
21 approved by the Court, approved by the Master to  
22 proceed forward with that project quickly under the  
23 agreement. Is that possibly why this thing moved  
24 fast?

25 A. I don't know.

1 MR. SEAMAN: Objection to form.

2 Q. Okay. All right. So at some point  
3 then, in order to move forward with the settlement  
4 agreement, as we discussed, there was a hearing  
5 before the -- a site plan application before the  
6 Emerson -- is it the Land Use Board?

7 A. Municipal Land Use Board.

8 Q. Right. Were you a member of that board  
9 at that time?

10 A. At what time?

11 Q. At the time this application came  
12 forward in late 2018.

13 A. No.

14 Q. In advance of that, do you know if there  
15 were professionals that reviewed the plan for the  
16 Borough of Emerson?

17 A. I believe there were.

18 MR. FIORENZO: Steve, pull this up,  
19 please.

20 Q. Who was the town engineer at that time?

21 A. Gary Ascolese.

22 Q. From Boswell Engineering?

23 A. Correct.

24 Q. Did you know Mr. Ascolese?

25 A. I know Mr. Ascolese.

1 Q. Was he the engineer for any period of  
2 time in town? For how long?

3 A. I don't remember how long.

4 Q. Did you consider him a good engineer?

5 MR. SEAMAN: Objection to form.

6 A. In some cases.

7 Q. Okay. And who is the town planner?

8 A. Who is the town planner?

9 Q. Who was the town planner in December of  
10 2018?

11 A. Brigitte Bogart.

12 MR. FIORENZO: So let's mark this  
13 document, please.

14 MR. KLEIN: DD-19.

15 Q. So DD-19 is a memorandum from Ms. Bogart  
16 dated December 10, 2018, and it was submitted to the  
17 Emerson Land Use Board, Re: Emerson Station Site  
18 Plan Application. Have you seen this document  
19 before today?

20 A. I don't remember.

21 Q. Had you reviewed it at the time you  
22 appeared before the Land Use Board?

23 MR. SEAMAN: Objection to form.

24 A. No, I don't think I would have been  
25 privy to that 'cause it was to the Land Use Board.

1 Q. Well, it's a public document, but -- and  
2 I'm just asking, as of the time -- you appeared  
3 before the Land Use Board. Correct?

4 A. I attended the Land Use Board.

5 Q. And you made certain statements on the  
6 record.

7 A. During public comment.

8 Q. Yes. So --

9 A. I didn't like present as a professional  
10 or anything.

11 Q. Okay. That's fine. You appeared and  
12 made statements before the Land Use Board on  
13 December -- right around this time, December 10 of  
14 2018. Correct?

15 A. About that time, yes.

16 Q. And I'm simply asking, were you aware of  
17 the planner's comments at the time you made your  
18 statements?

19 A. I don't remember.

20 Q. Were you aware of whether, as of that  
21 date, Mr. Ascolese of Boswell had also submitted a  
22 report regarding the site plan?

23 A. I don't remember.

24 MR. FIORENZO: Can you pull that,  
25 please?

1           A.       I think that would have been considered  
2 work product until it was considered by the Land Use  
3 Board. It says to the Land Use Board. It doesn't  
4 say public document.

5           Q.       It's a public document when it gets  
6 submitted to the Land Use Board, do you know that?

7           A.       No, I don't.

8           Q.       Okay.

9           A.       Because I think until they consider  
10 it --

11          Q.       So why are you giving an opinion that  
12 it's work product?

13          A.       Because I --

14          Q.       Are you a lawyer?

15          A.       No, but I think that until something is  
16 considered as I've been told by attorneys --

17          Q.       So this is your legal opinion?

18          A.       -- that it -- no, I'm telling you as I  
19 understand it, until something is considered to a  
20 board, it's considered work product.

21          Q.       All right. So --

22                   MR. KLEIN: DD-20.

23          A.       I can tell you -- let me rephrase. They  
24 were not handed out at the meeting I should say.

25          Q.       I didn't ask that. Thank you for that

1 information.

2 This is a report of Boswell Engineering,  
3 December 6, 2018. Did you ever see this report or  
4 review this report before you appeared before the  
5 Land Use Board and made statements on the record?

6 A. I don't believe so.

7 Q. So there was a planner and an engineer  
8 and other professionals who testified at the hearing  
9 before the Land Use Board. Correct?

10 A. There was a -- say that again?

11 Q. There was a planner, Ms. Bogart,  
12 Mr. Ascolese from Boswell, and other professionals  
13 of the applicant who appeared at the Land Use Board  
14 for the presentation of the site plan application.  
15 Correct?

16 A. Correct.

17 Q. And you were there and you heard that  
18 presentation. Correct?

19 A. Correct.

20 Q. You were there as an objector. Correct?

21 A. I was there to hear what was going on.

22 Q. But you also were more than that, you  
23 objected to the plan publicly on the record.  
24 Correct?

25 A. Yes, after hearing the plan.

1 Q. Okay. I just wanted to confirm that.  
2 That's what I thought.

3 So when you objected on the record to this  
4 plan, you knew at that time that this site plan was  
5 being submitted to implement the requirement under  
6 the settlement agreement that Block 419 be developed  
7 with affordable housing, you were aware of that when  
8 this application was submitted. Correct?

9 A. I don't remember if I was cognizant of  
10 that.

11 Q. Well, you voted when the settlement  
12 agreement occurred to oppose it. Remember that?

13 A. I don't think that was forefront in my  
14 mind in opposing that.

15 Q. But you knew there was a settlement  
16 agreement when you appeared before the Land Use  
17 Board that required Emerson to fulfill its  
18 obligation with 419. Correct? You knew that,  
19 didn't you?

20 A. I guess.

21 Q. Okay. And so when you opposed this, if  
22 you were successful in convincing them not to  
23 approve it, did you have a plan for how they would  
24 bring themselves into compliance with the settlement  
25 agreement?



1           A.       I have said numerous times that I  
2       objected to the fourth story and to the density, and  
3       I surmised that what my feeling was was that they  
4       would go back to the drawing board and redraw  
5       something that was more fitting to our downtown.

6           Q.       Redraw it where? Where? Where were you  
7       going to get the 29 units from? The Court had  
8       reviewed it. The Master had reviewed it. They did  
9       an analysis of land development. This was the  
10      selected site. You were now opposing it. Assuming  
11      you were able to convince someone that they should  
12      not move forward, did you have an alternative plan  
13      in mind as the incoming mayor as to how you were  
14      going to now comply with the settlement agreement?  
15      Did you have a plan in mind?

16          A.       I don't remember.

17          Q.       Did you understand that if it wasn't  
18      approved, the Town of Emerson would be in breach of  
19      the settlement agreement, which mandated that the  
20      majority of its affordable housing be located at  
21      that site, did you understand that when you made  
22      your statements?

23                  MR. SEAMAN: Objection to form.

24          A.       I don't know if I remember it or I was  
25      cognizant of that.

1 Q. So you didn't even consider the  
2 consequence, did you?

3 MR. SEAMAN: Objection to form.

4 Q. Of your objections, did you?

5 A. I don't remember.

6 Q. Okay. So then ultimately you appeared  
7 there.

8 MR. FIORENZO: And let me pull up and  
9 mark...

10 MR. KLEIN: DD-21.

11 Q. DD-21 is a transcript of the December  
12 10th, 2018, proceedings and you attended. Right,  
13 ma'am?

14 A. What was the date?

15 Q. December 10, 2018. Right there. That's  
16 the hearing you attended. Right?

17 A. I guess, yeah. I don't remember the  
18 date.

19 Q. You guess?

20 A. I don't remember the date.

21 Q. Why are you -- is there any doubt you  
22 appeared at the meeting on that date? I thought you  
23 told me you did appear there, you made statements in  
24 opposition. Why do we have to go over this again?

25 A. Because I don't --

1 Q. You appeared there. Right?

2 A. I don't remember the exact date, and  
3 you've stated wrong dates in reading some of these  
4 documents --

5 Q. Oh, okay.

6 A. -- and our lawyers have corrected you.

7 Q. Oh, that was nice of them.

8 A. When I say I think so, it's because I'm  
9 assuming that you're giving me the correct date.

10 Q. Well, I thank you and them for  
11 correcting me. So do you want to correct me on this  
12 one?

13 A. I don't remember what date the meeting  
14 was.

15 Q. Yeah, let's take a look at what you had  
16 to say, maybe that will help. Okay? Do you want to  
17 do that?

18 MR. SEAMAN: Objection.

19 Q. Shall we do that together so we can  
20 clear this thing up?

21 MR. SEAMAN: Joe, why don't you ask a  
22 question.

23 A. As you keep saying, you're running the  
24 deposition.

25 Q. Yeah, yeah.

1 A. Why are you asking me?

2 Q. So let's do that. All right? Yeah,  
3 let's do that. Let's see if we can clear it up.

4 A. Yeah, let's have fun.

5 Q. Okay. So this is DD-21.

6 MR. FIORENZO: Let's go to page 137,  
7 please. You got it? Okay. And go to, let's see,  
8 137, line 12. Could you start with that, Steve?  
9 Just highlight that. And then over to 138, 13.  
10 Yeah, right about there, that's fine.

11 Q. Okay. So let's take a look -- well,  
12 actually, let's go back. It doesn't -- it doesn't  
13 show who was actually the speaker. Okay. Yeah. So  
14 you spoke. You were Mayor Elect DiPaola. Right?

15 A. Yes.

16 Q. So can we now agree that you did appear  
17 on December 10th, 2018, at the hearing of the Land  
18 Use Board?

19 A. Yes.

20 Q. Okay. So I want to look at line 8,  
21 Mayor Elect DiPaola. Here's what you say, and I'm  
22 asking you to confirm. This is a transcript, a  
23 recorded stenographic transcript.

24 "Still too big. It has a lot more character  
25 than this box, but it reminds me of a building I

1 used to hang in on 2nd Avenue in the City in the  
2 '80s. Look, I think the election of myself, Brian  
3 Gordon, and Ken Hoffman was a one-issue election,  
4 one issue you say, and it was a referendum on the  
5 development of Block 419 in downtown. That's what I  
6 was asking about before. Remember?

7 A. Probably where she got the quote from.

8 Q. Remember that? We were talking about  
9 whether you ran on that and if that was the issue,  
10 the principal issue? You state before the board  
11 that it was a one-issue election and it was Block  
12 419. Was that an honest and truthful statement when  
13 you made it?

14 A. Was what an honest and truthful  
15 statement?

16 Q. What I just read, that when you and your  
17 fellow members were elected, it was a "one-issue  
18 election," and it was a referendum on the  
19 development of Block 419 in our downtown. Was that  
20 an honest and truthful statement you made in public  
21 to the Land Use Board in front of all the people in  
22 your town?

23 A. At that time, yes.

24 Q. Okay.

25 MR. SEAMAN: Objection to form and it's

1 an expression of opinion, it's misstating a fact.

2 Q. And then you go on to state -- and by  
3 the way, when we talked earlier, a little bit  
4 earlier, I was asking you about -- we showed the  
5 newspaper article about overdevelopment, and I was  
6 asking you what project, doesn't it really mean 419,  
7 you said, I don't remember, I don't know. There's  
8 no doubt now that when you were talking about  
9 overdevelopment, that was the one issue that you and  
10 your mates ran on, which was the development of  
11 Block 419 of the downtown and that was it. Correct?

12 A. There were other projects that were in  
13 the hopper.

14 Q. Well, that's what you said on the  
15 record. Correct?

16 MR. SEAMAN: Objection to form.

17 A. Is what what I said on the record?

18 Q. That it was a one-issue election and it  
19 was a referendum. In other words, the vote for you  
20 guys was a referendum on the development of Block  
21 419. That's what you told the board. Right?

22 A. Yes, it appears that I said that.

23 Q. Yeah. And that was honest when you said  
24 it. Right? You wouldn't have lied about that,  
25 would you?

1 A. I wouldn't lie about anything.

2 Q. Perfect.

3 You go on to say, I would ask the board to  
4 respect the wishes of the people of Emerson and  
5 listen to them as far as making sure that a plan  
6 that is going to be the centerpiece of our downtown  
7 for possibly a hundred years or more until the next  
8 governing body and the next Land Use Board decides  
9 that it's not appropriate for town and needs to be  
10 updated, that this is the plan that you really want  
11 to see there for a hundred years, the generations  
12 are going to have to live with.

13 So those were all statements you made at that  
14 time. Correct?

15 A. Yes.

16 Q. Okay. And then you go on to say,  
17 there's this paragraph beginning on line 6, This is  
18 an existing building right now. You're referring to  
19 the fact that there was already a structure on the  
20 site? Ma'am?

21 A. I don't -- I said that?

22 Q. Yeah, you said that.

23 A. What did I say before that?

24 MR. FIORENZO: Run it back.

25 Q. It's just a run-on from where we were

1 before. You're asking to -- you say, This is the  
2 centerpiece of our downtown. Okay? And what I'm  
3 focused on -- this is all you making these  
4 statements. I'm focused on the statement that you  
5 make where you say -- yeah, right there. You say,  
6 This is an existing building, line 6, on the right,  
7 right now. So there was already a structure on the  
8 site. Correct?

9 A. That's what I'm trying to put into --

10 Q. Was there a structure on the site? All  
11 these people who had the businesses there?

12 A. Yeah, but I don't --

13 Q. There was a building. Right?

14 A. I'm trying to figure out what I was  
15 referring to when I say, This is an existing  
16 building.

17 Q. Well, why don't you just listen to my  
18 question and then try to answer the question.

19 So there was an existing building on the site.  
20 Correct?

21 A. There are a lot of existing buildings on  
22 the site.

23 Q. Yeah. And you go on to say, How is this  
24 good planning for the Borough of Emerson? How does  
25 this benefit the Borough of Emerson in any way other



1 than satisfying our affordable housing obligation?

2 So let me stop you there. That satisfaction  
3 of the affordable housing obligation was a  
4 significant benefit to Emerson, was it not?

5 A. I think that is subjectional.

6 Q. It's what?

7 A. I think that's a subjective question.

8 Q. Well, you say it's a benefit. You say,  
9 How does it benefit other than affordable housing?  
10 So the affordable housing obligation, the  
11 fulfillment of that --

12 A. I guess I --

13 Q. Let me finish.

14 A. I know.

15 Q. You're interrupting me again.

16 A. I apologize.

17 Q. And the protection against builder's  
18 remedy lawsuits and the reduction of the number of  
19 units that Emerson had to comply with all were  
20 benefits of the settlement agreement. We've been  
21 over this. Correct?

22 A. Yeah.

23 Q. Okay. And so when you're asking these  
24 rhetorical questions, how does the Borough benefit  
25 in any other way, you knew the answer to that,

1 didn't you?

2 A. I don't know how to answer your  
3 questions, I really don't.

4 Q. Well, you knew at that time when you  
5 made the statement that under the settlement  
6 agreement, in addition to satisfying 55 or  
7 60 percent of the affordable obligations, it also  
8 resulted in protection, a judgment of repose so that  
9 Emerson could no longer be sued by a builder.  
10 That's a benefit. Right? Is that a benefit?

11 A. That the Borough can't be sued?

12 Q. Yes.

13 A. Yeah, that's a benefit.

14 Q. And you also knew, as the settlement  
15 agreement laid out, that there were numbers that had  
16 been ascribed by COAH for affordable units to  
17 Emerson that were a lot higher than the numbers  
18 ultimately settled on. That was also a benefit,  
19 wasn't it?

20 A. Say that again? Than the numbers.

21 Q. Yeah. There were numbers of COAH units  
22 that COAH had said Emerson had to satisfy, and it's  
23 laid out in the agreement, that number of units that  
24 Emerson had to satisfy based on COAH was higher than  
25 what the settlement agreement ultimately required,

1 in other words, it lowered --

2 A. Yes.

3 Q. -- the number.

4 A. Yes.

5 Q. Okay. And that was also a benefit.

6 Correct?

7 A. Yes.

8 Q. Okay. You go on to say, Because to me  
9 does not look like it benefits Emerson. That's what  
10 you said in public. Right?

11 A. Yes, I said that.

12 Q. Okay. Now, when you appeared --

13 MR. FIORENZO: Pull up, please, page  
14 200, line 23.

15 Q. So did you also raise questions at this  
16 public hearing regarding environmental issues?

17 A. I don't remember.

18 Q. Let's see if I can help you. Okay?

19 Okay. So, again, this is at the Land Use  
20 hearing. You make the following statement:

21 "I just -- I need clarification. When  
22 somebody asked about whether or not the dry-cleaning  
23 property was clean enough to put housing on for the  
24 health and well-being of those future residents, you  
25 don't know that, if we could build on that property

1 yet? And what if," and then there's a statement.

2 So you were raising an issue at this time  
3 about whether there was environmental contamination  
4 at the site?

5 A. Yes.

6 Q. And what was the basis for you raising  
7 that question at the time? Did you have any facts  
8 to support that question?

9 A. Because it was widely known in newspaper  
10 articles that most dry-cleaners in the area of the  
11 Pascack Valley had sites that needed to be  
12 remediated because of the chloroacetyl localocamine  
13 (ph.) that was being leached into the ground where  
14 dry cleaners were.

15 Q. Okay. So you knew from being on the  
16 Land Use Board, I'm sure, that ultimately when an  
17 approval is given, there would be prepared a  
18 resolution memorializing it?

19 A. Uh-hum.

20 Q. Yes? And you know that one of the  
21 things that is customary and standard in any such  
22 resolution is that the applicant has to comply with  
23 all other governmental entity requirements,  
24 including the NJDEP. You're aware of that.  
25 Correct?

1 A. Yeah.

2 Q. Okay. In fact, who's Mr. Martin?

3 A. He was the board attorney.

4 Q. And when you raised that issue,  
5 Mr. Martin chimed in on page 200, beginning on line  
6 6, did he not?

7 MR. FIORENZO: Can you highlight that,  
8 Steve? Thanks.

9 Q. He says, May I be heard? Ms. DiPaola,  
10 you make an excellent point again like some other  
11 people have made in that regard. I think you know  
12 the resolution's all contingent upon all state  
13 approvals, local as well as state/county approvals,  
14 and that would be subject to the DEP in terms of  
15 whether or not -- whether the property is clean or  
16 not.

17 So he told you at that time there would be a  
18 condition of the resolution which would require DEP  
19 compliance if that was required. Correct?

20 A. Correct.

21 Q. So you raised this question about the  
22 environmental stuff and Mr. Martin responded.  
23 Right?

24 A. Yes.

25 Q. So as of that date, were you aware that

1 if there was any environmental issue, it would be  
2 something that would be sorted out by the state  
3 NJDEP?

4 A. Say that again?

5 Q. You're aware as of this date then if  
6 there was any environmental issues at the site, it  
7 wasn't the subject matter within the jurisdiction of  
8 the local Planning Board, but those would all be  
9 dealt with by the NJDEP, because this approval was  
10 contingent upon the DEP giving a clean bill of  
11 health. Correct?

12 A. I don't think there's anything wrong  
13 with an elected official making sure that everything  
14 was being done appropriately.

15 Q. Yeah, again, I didn't ask that though.  
16 Could you answer my question now?

17 A. He told me that, so I guess I knew it at  
18 that point.

19 Q. Okay. All right.

20 MR. BOTTA: Joe, do you want to take  
21 like a five-minute bathroom break post-lunch?

22 MR. FIORENZO: Yeah, absolutely. If you  
23 guys would like, we can take a break now, sure.

24 (A break was taken at 2:25 p.m.)

25 (Deposition resumes at 2:35 p.m.)

1 MR. FIORENZO: All right. Let's go back  
2 on the record.

3 Pull up E42. Okay. So, Steve, could  
4 you pull up E forty -- pull up the resolution.

5 BY MR. FIORENZO:

6 Q. So I put up on the board what we're  
7 going to mark as DD --

8 MR. KLEIN: 22.

9 Q. -- 22, Resolution of the Land Use Board  
10 of the Borough of Emerson.

11 Following the hearing, the board voted to  
12 approve the site plan application. Correct?

13 A. Yes.

14 Q. Did you review the resolution which  
15 we've marked here around the time it was prepared?

16 A. I don't believe so.

17 Q. When did you see this resolution for the  
18 first time, if at all?

19 A. Probably after it was approved.

20 Q. Well, again, probably is not competent.  
21 Do you remember --

22 A. I don't recall.

23 Q. Let's start with the basics. Have you  
24 ever seen it before?

25 A. Yes.

1 Q. Okay. Do you remember the first time  
2 you saw it?

3 A. No.

4 Q. Did you at some point in time see it  
5 after you were the mayor?

6 A. Yes.

7 Q. What was the context in which you saw  
8 it, why were you reviewing it at that time?

9 A. To familiarize myself at the time of  
10 what the stipulations were for the resolution.

11 Q. Okay. You say the stipulations. There  
12 were certain conditions in the resolution. Is that  
13 correct?

14 A. Uh-hum.

15 Q. Did you have discussions with any of  
16 your professionals regarding the resolution of the  
17 Land Use Board approving the site plan?

18 A. I don't remember.

19 Q. When you came into office, you had a  
20 reorganization meeting around January 1st?

21 A. Around January 1st, yeah.

22 Q. And at that time, were there a series of  
23 resolutions passed, including the appointment of  
24 professionals?

25 A. Yes.



1 Q. Did you change professionals at that  
2 time?

3 A. Yes.

4 Q. Did you change the township engineer  
5 from Boswell to someone else?

6 A. Yes.

7 Q. Who was the new township engineer?

8 A. Neglia Engineering.

9 Q. Why did you remove or not renew Boswell?

10 A. The governing body voted in favor of  
11 Neglia. They reviewed all of them and they thought  
12 that Neglia was the most qualified.

13 Q. Did you know Neglia?

14 A. No.

15 Q. So prior to Neglia's appointment, had  
16 you dealt with anyone from Neglia?

17 A. No. I only knew them on their  
18 reputation.

19 Q. Had they contributed any money to your  
20 campaign?

21 A. I don't remember.

22 Q. You don't remember?

23 A. I don't remember.

24 Q. Is it possible they did?

25 MR. SEAMAN: Objection to form.

1 A. I don't remember.

2 Q. Yeah, I know that, but is it possible  
3 that they did?

4 MR. SEAMAN: Objection to form.

5 A. I mean, it's possible pigs are going to  
6 fly out of the sky. I mean, is it possible? I  
7 don't remember.

8 Q. You're not denying they contributed,  
9 that's why I asked. Does that mean there's a  
10 possibility they did?

11 MR. SEAMAN: Objection to form.

12 A. I don't remember.

13 Q. Did you ever solicit a contribution from  
14 them?

15 A. I don't remember.

16 Q. Who is your point of contact at Neglia?

17 MR. SEAMAN: Objection to form.

18 A. Like today who is my point of contact?

19 Q. No, back then when they were brought in?

20 A. I don't think I had a point of contact.  
21 I think they just sent an RFQ in.

22 Q. Okay. Other than the engineer, did you  
23 also change the planner?

24 A. Yes.

25 Q. So you removed or did not reappoint

1 Ms. Bogart?

2 A. We did not reappoint Ms. Bogart.

3 Q. And who did you replace her with?

4 A. Statile Planners, Caroline Reiter.

5 Q. Did you know Ms. Reiter before she was  
6 appointed?

7 A. No.

8 Q. You never dealt with her at all?

9 A. No.

10 Q. Did you recommend Neglia?

11 A. What do you mean by recommend?

12 Q. Did you recommend, did you suggest to  
13 the governing body that we bring in Neglia?

14 A. I think I recommended that we not  
15 reappoint Boswell, but I don't think I store them --  
16 steered them into any particular direction. I  
17 don't --

18 Q. Again, I asked if you recommended them.

19 A. I don't remember.

20 Q. Was there anyone else considered other  
21 than Neglia?

22 A. There may have been, yeah.

23 Q. Well, I know. That's why I'm asking.  
24 Was there?

25 A. I don't remember exactly who, but I

1 would assume that more than two people responded to  
2 an RFQ.

3 Q. So other than Ms. Reiter and Mr. Neglia,  
4 was there a new architect brought in?

5 A. Yes.

6 Q. Who was the prior architect under  
7 Lamatina? Axis?

8 A. I believe so, yeah.

9 Q. And who did you bring in?

10 A. Kevin Settembrino.

11 Q. Did you know Mr. Settembrino?

12 A. Only because he had answered an RFQ  
13 years before.

14 Q. Had you done any business with him?

15 A. No.

16 Q. Had the town?

17 A. I don't think so.

18 Q. Did he contribute to your campaign?

19 A. I don't remember.

20 Q. So maybe he did, maybe he didn't, you  
21 don't know.

22 A. I don't remember.

23 Q. You don't know. You don't remember.  
24 Could be he did, could be he didn't.

25 A. Right. I don't remember.

1 Q. Okay. Now, were you unhappy with the  
2 performance of your -- of the professional engineer  
3 Boswell as of the time you took office?

4 A. Yes.

5 Q. What was it you were unhappy with?

6 A. I was unhappy with his work.

7 Q. What parts of his work were you unhappy  
8 with? We're now talking about Mr. Ascolese. Right?

9 A. Yeah.

10 Q. What did he do that you didn't like?

11 A. I felt he was too accommodating.

12 Q. To whom?

13 A. To the mayor.

14 Q. And what facts are you aware of that led  
15 you to conclude that he was too accommodating?

16 A. Various projects over the years that he  
17 contributed to for the Borough.

18 Q. How about 419, did you believe he was  
19 too accommodating to Mayor Lamatina regarding the  
20 site plan approval process for 419?

21 A. Yes.

22 Q. Did you express that to anyone?

23 A. I think I expressed it to him.

24 Q. Okay. Well, what did you say to him?

25 A. I said it at the Land Use Board, so you

1 probably have a transcript of it.

2 Q. Well, I --

3 A. I don't remember, but I do think I said  
4 something to him and to Ms. Bogart.

5 Q. But what, what was the tenor of the  
6 statement?

7 A. That I was displeased with their  
8 decision.

9 Q. Whose decision?

10 A. Their engineering and their planning of  
11 the project.

12 Q. Well, they didn't engineer it or plan  
13 it, they reviewed it, didn't they?

14 A. Well, the review of the plans of the  
15 engineer.

16 Q. So you were critical of their review of  
17 the plans that were submitted pursuant to the  
18 settlement agreement?

19 A. To the settlement agreement?

20 Q. Yeah, the plans that were submitted, the  
21 site plan, was for -- was to implement the terms of  
22 the settlement agreement. So I'm asking whether --  
23 what were you critical about in their review of  
24 those plans?

25 A. That they thought that the height was

1 acceptable for Emerson's downtown, and that the  
2 change in the plans aesthetically that Ms. Bogart  
3 agreed that were proper planning.

4 Q. So you thought that their acceptance of  
5 the height -- that the height was acceptable was a  
6 problem for you. Correct?

7 A. Uh-hum.

8 Q. Yes?

9 A. Yes.

10 Q. Was the site plan submitted a conforming  
11 site plan?

12 MR. SEAMAN: Objection to form.

13 Q. Do you know what I mean by that?

14 A. Yeah, I do know what you mean by it.  
15 Yeah, I think it was.

16 Q. So by conforming, that means it  
17 conformed to the local ordinances, including use and  
18 bulk requirements. Correct?

19 A. Yes, because we changed the ordinances  
20 so that it didn't have to require a variance.

21 Q. Well, you understand then if the  
22 engineer is reviewing it, he has to review it in  
23 accordance with the existing ordinances, didn't you  
24 know that?

25 A. I do know that.

1 Q. So when Mr. Ascolese reviewed it with  
2 respect to height and reached the conclusion that it  
3 conformed, that wasn't his fault as an engineer, he  
4 was simply reporting whether the plan conformed or  
5 not. Correct?

6 A. Yes.

7 Q. So how could you complain to  
8 Mr. Ascolese because of the height?

9 A. Because I said it was all of his work as  
10 a total. He was involved in the fourth-story issues  
11 of height.

12 Q. What do you mean he was involved?

13 A. He was involved.

14 Q. In what way?

15 A. In helping to write the ordinance as to  
16 what height levels were going to be acceptable in  
17 the Borough.

18 Q. Did he write that ordinance because it's  
19 what he wanted or was he --

20 A. No.

21 Q. -- requested by his client to do so?

22 A. He was requested by I believe Mayor  
23 Lamatina to do it.

24 Q. Again, as the engineer, if you're  
25 working for the town and they've asked you to draft



1 an ordinance, is it his function to say no?

2 MR. SEAMAN: Objection to form.

3 A. I think that when you are a professional  
4 for a borough, that you should do what's in the best  
5 interest of the borough, not just what different  
6 elected officials want.

7 Q. So he should overrule the policy-making  
8 decisions of the elected officials?

9 MR. SEAMAN: Objection to form.

10 Q. Is that what you think the function of  
11 an engineer is?

12 A. My feeling is when you have a borough  
13 professional, they should guide you accordingly on  
14 what's appropriate for your town and not just please  
15 the people that are voting for you.

16 Q. So if you as the mayor tell your  
17 engineer we want you to draft a particular ordinance  
18 as a policy matter because we, as the governing  
19 body, think this is good policy, you're saying that  
20 the engineer should say no?

21 A. I think that he should just have a  
22 conversation with the governing body saying that he  
23 doesn't think that it's appropriate.

24 Q. Do you know what conversation he had  
25 with the governing body --

1 A. No.

2 Q. -- when he was asked to prepare an  
3 ordinance?

4 A. I don't think he had any conversation.

5 Q. Well, do you know if he had a  
6 conversation?

7 A. I don't.

8 Q. All right. So you don't know what he  
9 did or didn't do in connection with that ordinance.  
10 Correct? True or not?

11 A. Do I know what he did with that  
12 ordinance or not.

13 Q. In connection with the preparation of  
14 that ordinance.

15 A. I'm pretty sure he prepared the  
16 ordinance.

17 Q. You're pretty sure. Do you know?

18 A. I don't know who else would have done  
19 it.

20 Q. Well, could the attorney have drafted an  
21 ordinance?

22 MR. SEAMAN: Objection to form.

23 A. It wouldn't be the appropriate person to  
24 do it.

25 Q. You don't know who did it, that's the

1 point. Correct?

2 A. I know that when an ordinance is  
3 drafted, the different professionals that are  
4 speaking to each subject matter prepare their  
5 portion of it. I don't think the attorney went out  
6 and measured to see what were appropriate levels.

7 Q. But you don't know who actually prepared  
8 the ordinance as you sit here today. Can you state  
9 that with any certainty?

10 A. Who prepared the ordinance?

11 Q. Who prepared and drafted the ordinance?

12 A. I have no idea.

13 Q. And you don't know what discussions that  
14 person who drafted it had with the policymakers as  
15 to what they wanted him to do. Correct?

16 A. Well, I was one of the policymakers. I  
17 don't remember any discussions.

18 Q. Well, were there any discussions at the  
19 governing body level?

20 A. I don't recall.

21 Q. Okay. So that's why you didn't like  
22 Ascolese, because he didn't -- you thought the  
23 height was not acceptable and he should have done  
24 something about that. Correct?

25 A. I have a very different vision of what

1 professionals do.

2 Q. I didn't ask what -- I didn't ask that.  
3 I asked you to confirm what I think you said, which  
4 is that you didn't like the work Ascolese did  
5 because you thought the height wasn't acceptable and  
6 he should have done something about that. That's  
7 what you told me. Correct?

8 A. Yeah, but I think --

9 Q. Yes? Before you get to the but, just  
10 answer the question first.

11 A. I don't know how to answer your  
12 question, because professionals have discussions and  
13 make recommendations, and I don't know what --

14 Q. You don't know what discussions they  
15 had.

16 A. And I don't know what recommendations  
17 were his or weren't his.

18 Q. I'm just asking your position. You told  
19 me that -- I said, why did you let Ascolese go, what  
20 didn't you like about the work he did? The one  
21 thing you said to me is that you thought that the  
22 height was not acceptable on the 419 project and he  
23 should have done something about that. Did you tell  
24 me that a moment ago?

25 A. Yes, I think he should have advised --

1 Q. Okay. Yeah, good. But at the board  
2 level, he -- there was an existing ordinance, so  
3 when he reviewed the plans, he had to determine if  
4 it complied or not. Correct?

5 A. Yes.

6 Q. And it did comply. Correct?

7 A. Yes, because we changed the ordinance so  
8 that it would.

9 Q. Right. Because the governing body voted  
10 to do that. Right?

11 A. Yeah.

12 Q. It's a legislative decision by the  
13 governing body. Correct?

14 A. Yes, which I disagreed with.

15 Q. Of course. You voted against it. So --  
16 but it became the law. Right? It was the law in  
17 town, the ordinance.

18 A. Yes.

19 Q. And so therefore Ascolese, like any  
20 other professional, has to follow the law, doesn't  
21 he?

22 A. Yes.

23 Q. Okay. And that's what he did. Right?

24 MR. SEAMAN: Objection to form.

25 Q. He compared the plan to the existing

1 ordinances, the law in town, to determine whether it  
2 deviated or not. That's what he did. Right?

3 A. I guess.

4 Q. Okay. So why else did you not renew?  
5 What other things didn't you like about what he did,  
6 other than the fact that you thought it was too high  
7 and he should have done something about it, even  
8 though that was the law in Emerson, what else did he  
9 do?

10 A. I don't recollect right now.

11 Q. Okay. How about the planner, what, if  
12 anything, did she do that you didn't like that led  
13 you to conclude that she shouldn't be renewed?

14 A. She made a lot of suggestions that  
15 didn't make any sense for the Borough of Emerson.

16 Q. So give me the top five.

17 A. Thinking that it was okay to encapsulate  
18 a two-story existing building with the project on  
19 419 that Accurate Builders was building.

20 Q. I'm sorry, so this is 419 again?

21 A. Uh-hum.

22 Q. What is it she recommended be done?

23 A. She recommended that the buildings were  
24 blighted. She recommended eminent domain. She  
25 recommended that it was an appropriate look to

1 encapsulate another building with another -- an  
2 existing building with a new building on 419.  
3 Pretty much everything she did I think I didn't  
4 agree with.

5 Q. What do you mean by encapsulate?

6 A. If you've ever seen the plans of 419,  
7 there's an existing building in the center of it and  
8 it's encapsulated on three sides.

9 Q. All right. So now, after the -- after  
10 you came in office now and you brought in your own  
11 team of professionals, did you have any -- any  
12 meetings with them to discuss what your goals and  
13 objectives were for the town?

14 A. Yes.

15 Q. Okay. And when did you do that?

16 A. Shortly after I took office, I think.

17 Q. Okay. Tell me when that happened.

18 MR. SEAMAN: Objection.

19 A. I believe after they were appointed.

20 Q. So did you then call everyone in and  
21 have a meeting?

22 A. No, not particularly. I think I just  
23 met with two of the attorneys.

24 Q. Who were the two attorneys you met?

25 A. Maybe three. John McCann, Rich

1 Malagiere, and Brian Giblin. Or maybe it was just  
2 Malagiere and Giblin. I don't remember.

3 Q. So other than the attorneys, did you  
4 meet with any of the other professionals once you  
5 took over to discuss what your agenda was?

6 A. No.

7 Q. Did you meet with the engineer?

8 A. No.

9 Q. So you didn't have any meetings with  
10 Mr. Atkinson?

11 A. No. I think I met him when he came to  
12 the first meeting.

13 Q. And how about the new planner, you  
14 didn't meet -- and who was that again?

15 A. Caroline Reiter.

16 Q. Reiter. You didn't meet with her to go  
17 over your agenda?

18 A. I don't think so.

19 Q. Okay.

20 A. You keep saying agenda. I don't know  
21 that I necessarily had an agenda.

22 Q. Well, you ran on an agenda, didn't you?  
23 Didn't you have -- when you tried to get people to  
24 vote for you, didn't you tell them what your agenda  
25 was?



1 A. I just don't like the word agenda.

2 Q. Okay. Whether you like it or not, it's  
3 a word. Did you have an agenda?

4 A. Personally, no, I didn't have an agenda.

5 Q. Did you have issues that you --

6 A. I had issues --

7 Q. -- knocked around?

8 A. -- that I didn't like that were  
9 happening in the town.

10 Q. Again, you're talking over me. Okay?  
11 You're talking over me again.

12 Did you have issues that you ran on that you  
13 wanted to address for Emerson?

14 A. Yes.

15 Q. And did you review those issues with the  
16 new professional staff that you hired?

17 A. Only as it came up.

18 MR. FIORENZO: Okay. Steve, could you  
19 pull up E53.

20 Q. So this is another Pascack Press article  
21 by John Snyder, who you confirm you've spoken with.  
22 Correct?

23 A. Correct.

24 Q. Marked as D?

25 MR. KLEIN: DD-23.

1 Q. DD-23. So let's mark it.

2 MR. FIORENZO: Could you pull up the  
3 article, Steve?

4 MR. KLEIN: Just one second.

5 MR. FIORENZO: What happened to that  
6 quick new software.

7 Q. Oh, look at that. All right. So  
8 there's a very nice photo of you. Who are you with?

9 A. Carlos Renda.

10 Q. Who is he?

11 A. The Mayor of Woodcliff Lake.

12 Q. Got it. You're quoted in here  
13 predicting, "It's not going to be smooth but it's  
14 going to be fun." Did you make that statement to  
15 the PAC group at the organization meeting?

16 A. Yes.

17 MR. FIORENZO: And scroll down, Steve,  
18 to the last -- you know, the last paragraph dealing  
19 with DiPaola, Gordon, and Hoffman. Yeah.

20 Q. Okay. So the article states, DiPaola,  
21 Gordon, and Hoffman (returned after two terms, 2005  
22 through 2010) had campaigned hard on the issue of  
23 what they called overdevelopment, taking aim at the  
24 four-story Block 419 redevelopment project long  
25 taking shape and just approved. Is that true?

1 A. I'd say so, yeah.

2 Q. Okay. And the next paragraph goes on,  
3 "With her rise, DiPaola, who often found herself the  
4 lone no vote on Block 419 matters, might well find  
5 herself presiding at the project's ribbon cutting."  
6 Did you have that discussion with the reporter as  
7 well?

8 A. About cutting a ribbon, no.

9 Q. So that's just the reporter.

10 A. Yeah.

11 Q. Now, after this article --

12 MR. FIORENZO: Steve, could you pull  
13 up --

14 MR. BOTTA: By the way, do you want to  
15 amend that part about being mayor is fun? It's a  
16 joke. Off the record.

17 (Discussion off the record.)

18 MR. FIORENZO: Okay. Steve, pull up  
19 E58.

20 MR. KLEIN: DD-24.

21 Q. So this is another one of the Passaic  
22 Press and Northern Valley Press local newspaper,  
23 Mr. Snyder wrote another article.

24 MR. FIORENZO: Scroll down if you would.

25 MR. BOTTA: Do you have a date on that,

1 Steve?

2 MR. FIORENZO: Yeah, it's small up here.

3 It's --

4 MR. KLEIN: No, it's the date it was  
5 printed. It says 4/6 --

6 MR. FIORENZO: 4/6/20, but that's not  
7 the date.

8 MR. KLEIN: No.

9 THE WITNESS: No. The chamber meeting  
10 is generally January or February.

11 MR. FIORENZO: I have the date as  
12 January 24th from some source, but maybe it's  
13 further buried inside.

14 Q. So at this time --

15 MR. FIORENZO: Scroll back a little bit,  
16 Steve.

17 Q. At this point in January now, your new  
18 administration is just beginning. And was  
19 affordable housing in Emerson the big ticket item  
20 that you were concerned about?

21 MR. SEAMAN: Objection to form.

22 A. I'm sorry, could you say that again?

23 Q. Was affordable housing as you took  
24 office the big ticket item that you were concerned  
25 about?

1           A.       Was affordable housing? No, that was  
2 not my -- no.

3           Q.       That wasn't considered a big ticket item  
4 to you?

5           A.       Affordable housing?

6           Q.       Affordable housing and development and  
7 overdevelopment.

8           A.       Overdevelopment was, not --

9           Q.       Well, that would have included within  
10 it -- the reason it gets overdeveloped and higher  
11 density as we discussed is because of Mount Laurel  
12 gives higher density, thereby creating potential  
13 overdevelopment. Correct?

14                   MR. SEAMAN: Objection to form.

15                   MR. BOTTA: Objection to the form. You  
16 can answer that if you understand it.

17           Q.       Right?

18           A.       You said a lot of words. Can you just  
19 ask me one question?

20           Q.       You understand, and I thought we'd gone  
21 over this, that the issue of overdevelopment, which  
22 equates to higher density than you otherwise might  
23 have, is triggered by Mount Laurel housing because  
24 there are, quote, density bonuses that the law says  
25 that you get. You understand that. Right?

1           A.       Yeah, but I don't think it's the only  
2       reason that things are dense --

3           Q.       No.

4           A.       -- or overdeveloped.

5           Q.       But that's a reason why the 419 project  
6       is as dense as it is, 'cause if it didn't have the  
7       Mount Laurel, there would be no way they would be  
8       entitled to the number of units that they had.  
9       Correct?

10                   MR. SEAMAN: Objection to form.

11           A.       I don't know how to answer the question.

12           Q.       Well, do you know the answer? Well,  
13       let's assume. Pretend for a moment there was no  
14       Mount Laurel at the Block 419 site. Do you not  
15       understand that if there was no Mount Laurel, there  
16       would be lower density development at the site?

17                   MR. SEAMAN: Objection to form.

18           Q.       Do you understand that?

19                   MR. SEAMAN: Objection to form.

20           A.       I don't know if that's a fact.

21           Q.       And an application to build and develop  
22       on that site without affordable housing yields less  
23       units than with affordable housing. Do you deny  
24       that?

25                   MR. SEAMAN: Objection to form.

1           A.       I don't know the answer to your  
2       question.

3           Q.       You don't know?   You don't know.

4           A.       I don't know.

5           Q.       Okay.   So when you're talking about  
6       density of development and overdevelopment, you  
7       don't understand what impact Mount Laurel has on  
8       overdevelopment?

9           A.       On this specific project?

10          Q.       Yes.

11          A.       Yes, I understand that.   You're saying  
12       overall I thought.

13          Q.       Do you understand on this specific  
14       project --

15          A.       Yes.

16          Q.       -- that the existence of Mount Laurel  
17       and the Court's rulings in this case mandating  
18       compliance had an effect on overdevelopment of the  
19       site, did you understand that?

20          A.       I understand what you're saying, but I  
21       still think it could have been built smaller and  
22       still satisfied our affordable housing obligation.

23          Q.       Well, great.   You're not an expert on  
24       that and I'd be happy for you to give us an expert  
25       opinion to that effect.   Your intuitive belief on

1 that, while interesting, is of no real moment. My  
2 point is that do you acknowledge that one of the  
3 reasons why there's overdevelopment at the subject  
4 site or there's higher density at the subject site  
5 is because the Court-approved settlement gave  
6 density bonuses as a reward to the developer for  
7 building affordable housing. You understood that.  
8 Correct?

9 A. I understand that.

10 Q. Okay. So when we talk about this issue  
11 of overdevelopment at the site, overdevelopment at  
12 the site and density at the site is linked to Mount  
13 Laurel, which gives density bonuses. Correct?

14 MR. SEAMAN: Objection to form.

15 A. I don't know about the bonuses.

16 Q. You don't know that there's higher  
17 density because of Mount Laurel from the settlement  
18 agreement and everything else that you reviewed  
19 while you were on the governing body, you don't know  
20 that?

21 A. Not the way you're describing it. Maybe  
22 it was described a different way.

23 Q. Well, is there greater density that's  
24 given to a developer who's willing to put Mount  
25 Laurel housing on a site, do you know that?



1 A. Is there -- say that again?

2 Q. Is there greater density permitted to a  
3 developer who's willing to build Mount Laurel  
4 housing on a site?

5 A. Like in every occasion or in this  
6 occasion?

7 Q. In this occasion.

8 A. Yes.

9 Q. Okay. In fact, that was part of the  
10 settlement agreement. Correct?

11 MR. SEAMAN: Objection to form.

12 A. What was part of the settlement  
13 agreement?

14 Q. The fact that there were bonuses,  
15 greater density given to the developer because the  
16 developer was willing to build affordable.

17 A. I just don't remember the word "bonus"  
18 being used.

19 Q. Bonus, greater density, more units.  
20 There were more units allowed to be built because  
21 there was a Mount Laurel component that the  
22 developer was willing to build. You understood that  
23 when all the -- when the settlement agreement was  
24 being discussed. Correct?

25 A. Yes.

1 Q. Okay.

2 A. And I was against it.

3 Q. Okay. All right. So in this article --  
4 go to this. First of all, that's a very nice  
5 picture there. You're in that photo? Yes, you are.  
6 Very nice.

7 A. Glad it meets with your approval.

8 Q. These were all people -- these were all  
9 people with the -- yeah. No, I'm very impressed, so  
10 I just wanted to let you know that. So, you know,  
11 everybody there looks very good. You look very  
12 nice. And my question is, this is the Chamber of  
13 Commerce people?

14 A. Those are the mayors with part of the  
15 Greater Pascack Valley members.

16 Q. Okay. So these are all mayors.

17 A. Or representatives from boroughs.

18 Q. Got it. Okay. So in this article,  
19 which I guess the reporter was reporting as a result  
20 of this meeting of the mayors -- was the reporter at  
21 that meeting?

22 A. He usually is. I don't remember if he  
23 was at this one, per se.

24 Q. Well, it says, Emerson Scaling Back.  
25 Let's go to that. Emerson's new mayor, Danielle

1 DiPaola, made her first appearance at the breakfast,  
2 where she appealed for help "from anyone in the  
3 room" during this time of transition, including the  
4 search for a new borough administrator. So did you  
5 make such a statement at the breakfast?

6 A. Yes.

7 Q. Okay. And then she goes on -- he goes  
8 on to say, "She said," referring to you, "affordable  
9 housing and redevelopment were the big ticket items  
10 she is carrying over." Let me stop there.

11 So did you tell that to the assembled mayors  
12 that in Emerson, that affordable housing and  
13 redevelopment were the big ticket items consistent  
14 with what I guess you said earlier, that that was  
15 the number one issue, that's what you were elected  
16 on. So did you make that statement?

17 A. Probably something like it.

18 Q. Okay.

19 MR. FIORENZO: So scroll down, Steve, to  
20 the next paragraph. She said, the third paragraph,  
21 could you highlight that, please?

22 Q. The article says, She said, "I think  
23 we've gotten a little bit lost on trying to do big  
24 projects. We're going to continue with all of the  
25 drainage projects we've started and we have a lot of

1 grants for those." Did you make that statement to  
2 the reporter?

3 A. I guess so.

4 MR. FIORENZO: Continue down, Steve.  
5 Scroll. Okay.

6 Q. The reporter reports, "In the meantime,  
7 she said," referring to you again, "'We're trying to  
8 scale this back and make it more of a reasonable  
9 development that is friendlier to our small  
10 downtown.'" Did you make that statement to the  
11 reporter?

12 A. I guess I did.

13 Q. Okay. And when he quotes you as saying  
14 we're, meaning the town, I presume. Right? The  
15 "we're" is the town? You were at the breakfast and  
16 you're giving a speech. We're meaning Emerson?

17 A. I guess.

18 Q. Okay. Trying to scale this back. So  
19 scale back the 419 project you're discussing.  
20 Correct?

21 A. I think overdevelopment in general.

22 Q. Well, you were specifically focused on  
23 419, 'cause as you said to other reporters -- you  
24 said to this reporter, that was the big ticket  
25 issue. Right?

1 MR. SEAMAN: Objection to form.

2 A. Yeah, but I don't know when I said that  
3 statement what I was referring to.

4 Q. Well, what project were you trying to  
5 scale back at that time?

6 A. Did I say a specific project?

7 Q. We're trying to scale this. What's the  
8 "this" that you're trying to scale back?

9 A. I could have been talking about 419.

10 Q. Okay. Is there any other -- was there  
11 any other large development project in town at that  
12 time other than 419?

13 A. There was also, I told you, a project  
14 approved for the Valero that people thought was too  
15 big.

16 Q. Is that downtown?

17 A. Uh-hum.

18 Q. Where?

19 A. Across the street from 419.

20 Q. How big is that?

21 A. It's a big gas station with a 7-Eleven  
22 with --

23 Q. Okay.

24 A. -- residential on top.

25 Q. You weren't talking about the Valero

1 project before the mayors, were you? You were  
2 talking about 419.

3 A. I don't recall.

4 Q. Let me see if I can help you. "Downtown  
5 redevelopment is in the process of acquiring  
6 properties, she said."

7 So the downtown redevelopment which was in the  
8 process of acquiring properties was the 419 project.  
9 Correct?

10 A. Yes.

11 Q. So in the following sentence then it  
12 says, In the meantime, she said, we're trying to  
13 scale this back, it appears to refer to the downtown  
14 redevelopment project.

15 A. Then I was talking about 419, yes.

16 Q. Okay. Great. So when you told the  
17 assembled mayors that you wanted to scale back the  
18 419 project, what did you intend to do to scale it  
19 back since it had Planning Board approval? I'm  
20 sorry, it had Land Use Board approval.

21 A. I have no idea what I meant by that. It  
22 was probably the first time I was speaking in public  
23 after I was elected mayor.

24 Q. How could you scale it back if you  
25 wanted to? How could you do that? What would you

1 do?

2 A. I think I wasn't able to, which is why  
3 it didn't happen.

4 Q. So you weren't able to, but you said,  
5 we're trying to scale it back. How were you -- what  
6 were you doing to try to scale it back? I mean,  
7 again, you're making a public statement to the  
8 mayors. You were trying to be honest about what  
9 your intentions were. Correct? Yes?

10 A. Yes. I also said it was probably the  
11 first time I was speaking to such a large crowd of  
12 people and may have said things that --

13 Q. Well, you didn't lie to them, you didn't  
14 say things that --

15 A. No, I didn't lie to them.

16 Q. Because you wouldn't do that, you've  
17 told us. So assuming you were telling the truth,  
18 and I'm sure you were, when you told the mayors  
19 under the topic of Emerson Scaling Back, that's the  
20 heading of the article, when you talked about trying  
21 to scale back 419, what efforts were underway at  
22 this time to do that?

23 A. I don't think there were any efforts.

24 Q. Were there ways that you discussed with  
25 anyone as to how you might scale back the project?

1 A. I don't remember.

2 Q. Do you know as you sit here today of any  
3 actions that were taken by Emerson to try to scale  
4 back the project?

5 A. I don't think we took any actions to try  
6 to scale it back.

7 Q. Did Emerson have a redevelopment  
8 committee?

9 A. Yes.

10 Q. Did the redevelopment committee meet and  
11 discuss ways to try to scale back the project?

12 A. No.

13 Q. Did you discuss with your professional  
14 engineer ways to scale back the project?

15 A. No.

16 Q. Did you discuss with the engineer -- do  
17 you know what the resolution compliance process is  
18 all about?

19 A. The what?

20 Q. Resolution compliance, do you know what  
21 that means?

22 A. Yes.

23 Q. What does it mean?

24 A. That means that the project has to  
25 comply with the resolution.



1 Q. What resolution?

2 A. Any resolution for whichever project  
3 it's written for.

4 Q. And did you have discussions with  
5 Mr. Atkinson at any time about that process?

6 A. I don't think so.

7 Q. You deny it?

8 A. I don't think I did.

9 Q. You don't think you did or you're sure  
10 you didn't?

11 A. I don't remember.

12 Q. Okay. Would the mayor, you, have a role  
13 in the resolution compliance process or would that  
14 normally be handled by the professionals?

15 MR. SEAMAN: Objection to form.

16 A. I don't know.

17 Q. Well, in the history of your time as the  
18 mayor, do you typically get involved in the  
19 resolution compliance process after a zoning board  
20 grants an approval with conditions?

21 A. We don't have a zoning board.

22 Q. Okay. Whatever board. Land Use Board.  
23 Do you typically get involved in that process --

24 A. When you --

25 Q. -- of resolution compliance?

1           A.       I don't understand what you mean when  
2       you say involved.

3           Q.       Do you have any role at all?

4           A.       Well, there might be a time where we're  
5       questioning whether someone is complying with the  
6       resolution, we may look at it and ask a professional  
7       in any given project if something that they've done  
8       complies with the resolution.

9           Q.       Who's the "we"? You look at the  
10       resolution to determine if it's compliant, is that  
11       what you do as the mayor?

12          A.       No.

13          Q.       That's what I'm asking. You as the  
14       mayor, Danielle DiPaola, since you've been elected,  
15       is it your role to review resolutions of the Land  
16       Use Board or any other board in town to determine  
17       compliance with condition or do you have others who  
18       do that?

19          A.       I don't really understand your question.  
20       You mean while it's being written?

21          Q.       Do you review compliance with Zoning  
22       Board resolutions to determine if someone has  
23       complied or not, whether they've checked off all the  
24       boxes and done all the things they're required to  
25       do, do you as the mayor do that?

1 A. I think anyone can do that once they --

2 Q. Do you as the mayor do that?

3 A. As a role? No.

4 Q. Yes, yes.

5 A. No.

6 Q. Okay.

7 A. But I can certainly look at a  
8 resolution.

9 Q. Have you ever done it?

10 A. Have I ever looked at a resolution and  
11 questioned whether something complies?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. When was the last time you did  
15 it?

16 A. Oh, God, I have no idea.

17 Q. Did you ever do it as to Block 419?

18 A. I don't recall.

19 Q. You hire professionals to do that. You  
20 have engineers in line. Correct?

21 A. Yes.

22 Q. Isn't that their role?

23 A. Yes.

24 Q. You're not an engineer. Right?

25 A. No.

1 Q. And you wouldn't be in a position really  
2 to evaluate whether it's compliant or not. Correct?

3 MR. SEAMAN: Objection to form.

4 A. I don't think it's beyond my scope or  
5 anyone to question whether an item that's listed on  
6 a resolution is being satisfied by the applicant.

7 Q. Okay. And so let me be as specific as I  
8 can as to Block 419. There was a Planning Board  
9 resolution, which you said you reviewed it at some  
10 time. You don't even remember when you reviewed it.  
11 Correct?

12 A. Correct.

13 Q. Did you involve yourself in any way in  
14 reviewing the conditions of the resolution to  
15 determine whether the applicant had complied?

16 A. At some point I may have.

17 Q. Did you ask people to look at certain  
18 things for you to determine whether my client had  
19 complied with the resolution?

20 A. I think the only thing that came up was  
21 there was specifically some wording in the  
22 resolution that asked for a cash escrow, and there  
23 was just conversation as to why they thought it was  
24 actual cash.

25 Q. Okay. Other than that? Other than

1 that, is there anything else?

2 A. I don't think so.

3 Q. Okay.

4 A. That's the only thing I think that I  
5 remember was from the resolution.

6 Q. So you never met or conferred with  
7 Mr. Atkinson and went over and asked him to do  
8 certain things with respect to the conditions?

9 A. I don't believe so, no.

10 Q. 'Cause that wouldn't be proper, would  
11 it?

12 MR. SEAMAN: Objection to form.

13 Q. If you did that. You're not supposed  
14 to, as the mayor, inject yourself into the process  
15 of telling the engineer what to do as to whether  
16 somebody has complied or not with a resolution.

17 MR. SEAMAN: Objection to form.

18 Q. You would agree that's not your  
19 function. Correct?

20 A. I'm not understanding what you're asking  
21 me, because I think anyone can look at a resolution  
22 and say, does this comply in your opinion, in your  
23 professional opinion does this comply.

24 Q. To who?

25 A. What do you mean by insert myself?

1 Q. But you, it's not your function as the  
2 mayor to do that, is it? Do you view it as your  
3 function to review a resolution to determine if  
4 they've complied with conditions?

5 A. I think anyone can look at a resolution.

6 Q. I didn't ask if anyone could. Do you  
7 view it as your function as the mayor to do it?

8 A. I don't know how to answer the question.

9 Q. As the mayor, did you do it in Emerson?

10 A. Not to my knowledge, but I don't think  
11 it's out of the realm for anyone to look at it.

12 Q. I didn't ask if it's out of the realm.  
13 I'm asking if you did it.

14 A. I don't recall.

15 Q. Do you remember after the approval was  
16 given that efforts were being made by the developer  
17 to meet with you?

18 A. There were efforts by the developer to  
19 meet with me?

20 Q. Yeah.

21 A. When?

22 Q. Again, you're a stranger to these  
23 proceedings. You don't get to ask me questions. I  
24 get to ask them of you.

25 Did you at any time receive a request from the

1 developer to try to meet with you after your  
2 administration came on board?

3 A. Yeah, he wanted to have lunch with me, I  
4 think.

5 Q. Okay. And did you meet with  
6 Mr. Klugmann?

7 A. No.

8 Q. Why not?

9 A. Because the first time I met him, I felt  
10 like he was hitting on me.

11 Q. Okay.

12 A. And he made me uncomfortable.

13 Q. Really?

14 A. Yes.

15 Q. So let's explore that for a moment.  
16 You're saying that when you met Mr. Klugmann, you  
17 perceived he was, quote/unquote, hitting on you?

18 A. I did.

19 Q. What did he do to lead you to that  
20 conclusion?

21 A. Called me beautiful.

22 Q. Okay.

23 A. Said he wanted to get to know me.

24 Q. Okay.

25 A. Said he wanted to spend time with me.

1 Q. Really?

2 A. Yeah.

3 Q. Okay. Where was that?

4 A. I was sitting on the dais. He came up  
5 after the meeting, after the governing body approved  
6 his 51 percent ownership in the project.

7 Q. So that was before you --

8 A. I mean, you saw the picture. Right?

9 Q. That was before you became mayor. Saw  
10 what picture?

11 A. Of me.

12 Q. What about it?

13 A. I think I looked a little different back  
14 then. I don't think it's so inconceivable.

15 Q. I'm sorry, you're saying --

16 A. I'm making a joke about my looks, sir.  
17 Sorry.

18 Q. You're saying the way you looked in the  
19 picture supports the contention that --

20 A. I'm joking.

21 Q. -- he would have hit on you 'cause  
22 anyone would have, is that what you're saying?

23 A. I was joking that I was attractive in  
24 the photo, that's all.

25 Q. Okay. All right. Which is why that



1 would support your contention that Mr. Klugmann  
2 would have made those statements.

3 A. Not that it supports it, but he did,  
4 it's a fact.

5 Q. Okay. And the picture is also some  
6 additional evidence of that, I guess.

7 A. I was making a joke, yes.

8 Q. Were you?

9 A. Well, you made such a comment about my  
10 photo. You studied it, stared at it, told me I  
11 looked very nice.

12 Q. Yeah. Did you think I was hitting on  
13 you, too?

14 A. I was making a joke on the fact that you  
15 were commenting on --

16 Q. Do you think I was hitting on you when I  
17 said you looked nice in the picture?

18 A. I thought it was kind of odd the way you  
19 stared at the photo, yeah.

20 Q. You thought I was hitting on you, too.  
21 Okay. So not only did Mr. Klugmann hit on you, but  
22 I hit on you as well?

23 A. Well, it appeared that you were  
24 evaluating me on my looks by staring at the photo  
25 and that you were agreeable to my looks at the point

1 in the photo, yeah, it made me uncomfortable.

2 Q. That made you -- so you --

3 MR. BOTTA: Maybe we can move on.

4 Q. So I made you uncomfortable. Well, no.  
5 I mean, so Mr. Klugmann you say made you  
6 uncomfortable because you thought he was hitting on  
7 you. And then just a moment ago when I looked at  
8 your picture and I said you looked very nice, you  
9 thought -- that made you uncomfortable that I was  
10 hitting on you as well?

11 A. I thought it was an odd statement to --

12 Q. Did you think I was hitting on you?

13 A. I thought it was an odd statement --

14 Q. No, no, no, did you think I --

15 A. -- to comment on my looks.

16 Q. Did you think I was hitting on you?

17 A. I think it was inappropriate --

18 Q. Did you think I was hitting on you --

19 A. -- to comment --

20 Q. -- yes or no?

21 A. -- on my looks.

22 MR. SEAMAN: Please don't raise your  
23 voice, Joe.

24 Q. Did you think I was hitting on you?

25 Answer the question, please.

1 A. Can I leave? 'Cause he's being --

2 Q. No, you can't leave.

3 A. -- really inappropriate.

4 Q. No, you're the one --

5 A. He's making me very uncomfortable  
6 talking about my looks.

7 Q. You brought it up.

8 A. He's the one that --

9 MR. BOTTA: Joe, let's stop.

10 Q. You brought it up.

11 A. He's staring at my photo.

12 Q. You brought it up.

13 A. Commenting on my looks for an  
14 inextricable amount of time --

15 MR. BOTTA: Let's take a break.

16 A. -- which I thought was odd and made me  
17 uncomfortable.

18 Q. You really think that I was hitting on  
19 you, just like Mr. Klugmann. Now I understand.

20 A. I didn't say you were hitting on me. I  
21 said you made me --

22 MR. BOTTA: She didn't say --

23 A. -- uncomfortable the way you were  
24 staring at my photograph and commenting on my looks  
25 in the photo.

1 Q. Oh.

2 MR. SEAMAN: Joe, we're going to take a  
3 five-minute break.

4 Q. So I -- do you think I was hitting on  
5 you?

6 MR. SEAMAN: Already asked and answered,  
7 Joe.

8 Q. Yes or no? I need to know that.

9 A. No, I don't think you were hitting on  
10 me.

11 Q. Oh, great. Okay.

12 A. But you were inappropriate staring at my  
13 photograph.

14 MR. BOTTA: We'll take five minutes.

15 Q. You are a very funny lady to think that  
16 I would have any interest in staring at your  
17 photograph.

18 A. You're a joke.

19 Q. You're a very funny lady.

20 A. Why did you do it?

21 Q. Because it's evidence in the case.

22 A. My photo?

23 MR. BOTTA: We're off the record.

24 Q. Yeah. It's an exhibit.

25 (A break was taken at 3:21 p.m.)

1 (Deposition resumes at 3:27 p.m.)

2 MR. FIORENZO: Let's go back on the  
3 record.

4 BY MR. FIORENZO:

5 Q. So after you took over as the mayor, did  
6 you oversee the actions that were being taken by  
7 your staff and professionals regarding the Block 419  
8 project?

9 A. No.

10 Q. What role, if any, did you have in  
11 overseeing the progress of the Block 419 project?

12 A. They only came to me if there was a  
13 problem and just made me aware that there was an  
14 issue.

15 Q. Who is "they"?

16 A. The administrator, the clerk.

17 Q. Did they come to you with any problems?

18 A. They didn't come to me with problems.  
19 They made me aware of the problems.

20 Q. What problems, if any, did they make you  
21 aware of?

22 A. Complaints that they were making.

23 Q. Okay. Complaints about what?

24 A. That they weren't being issued permits.

25 Q. So these were complaints that they told

1 you were being made by the redeveloper that permits  
2 were not being issued?

3 A. Right.

4 Q. Who told you that?

5 A. I believe it was the administrator.

6 Q. Mr. Hermansen?

7 A. I believe so. It could have been  
8 Mr. Sheola. He was before Mr. Hermansen.

9 Q. Did you have a discussion with  
10 Mr. Hermansen or anyone else as to why the permits  
11 were not issued?

12 A. Yes.

13 Q. What were the discussions you had with  
14 Hermansen about the permits?

15 A. It was explained to me that the permits  
16 either weren't applied for or that they weren't paid  
17 for and that is the reason they weren't getting  
18 them.

19 Q. Who told you that?

20 A. Probably Mr. Hermansen. I don't  
21 remember exactly.

22 Q. Did he tell you anything else as to why  
23 the permits were not issued?

24 A. No.

25 Q. Other than the issue of the complaint

1 about the permits, are there any other things you  
2 became involved with with regard to the Block 419  
3 after your administration took over?

4 A. No.

5 Q. That was it. Yes?

6 A. I didn't get involved in anything.

7 Q. Right. So that was it, just that one  
8 issue you've raised. Correct?

9 A. Or a property maintenance issue perhaps.

10 Q. Well, perhaps. Was there a property  
11 maintenance issue or not?

12 A. The gate kept opening into the street  
13 and the black curtain was falling and the debris was  
14 sitting there for months. In fact, some of the  
15 debris is still sitting there, has never been moved.

16 Q. Okay.

17 A. Just the general site that people were  
18 complaining to me that live in town about the  
19 looks -- of how atrocious it looked. And then they  
20 would complain to me and I would give the complaint  
21 to Rob.

22 Q. And Rob would then give it to someone  
23 else?

24 A. I guess.

25 Q. Do you know who Ron Cenicola is?

1 A. Yeah.

2 Q. Who is he?

3 A. He works in our construction department.

4 Q. Who hired him?

5 A. I guess I did. I don't really remember.

6 Q. Did you know him?

7 A. I know who he is now, but.

8 Q. Did you know him before you hired him?

9 A. No.

10 Q. Okay. So he works in the Building  
11 Department?

12 A. Yeah.

13 Q. Who's his boss?

14 A. Scott Wickersheim.

15 Q. Did you communicate to the Building  
16 Department that you wanted Mr. Cenicola to tag my  
17 client's property?

18 A. Not to my recollection, no.

19 Q. Do you know what it means to tag it?

20 A. No.

21 Q. Did you ever ask anyone to issue any  
22 violations --

23 A. No.

24 Q. -- to my client's property?

25 A. No.



1 Q. Okay. So now --

2 MR. FIORENZO: Pull up E196, please.

3 MR. KLEIN: DD-25.

4 Q. This is an article -- DD-25 is an  
5 article again in the Pascack Press.

6 MR. FIORENZO: I'm trying to -- is there  
7 a date on that?

8 MR. KLEIN: I don't think so.

9 Q. Okay. I don't want to keep this up too  
10 long for fear that I be accused of looking at your  
11 photo, so let's see if we can move through it  
12 quickly.

13 MR. BOTTA: Objection. Just move on,  
14 Joe.

15 MR. FIORENZO: Yeah, I am moving on. I  
16 am.

17 Q. So this article, second paragraph -- the  
18 article was written by --

19 MR. FIORENZO: Who is the reporter, do  
20 we have that, Steve?

21 MR. KLEIN: It just says who the photo  
22 is by.

23 Q. It's a photo by Murray Bass. Do you  
24 know who Murray Bass is?

25 A. No.

1 Q. Okay. The article says in the second  
2 paragraph, "In order to get 29 affordable housing  
3 units, Emerson 'lost seven businesses so far. Two  
4 others are still open and they're fighting for their  
5 lives,' she said, at the Chamber's annual mayors'  
6 breakfast at The Iron Horse Restaurant in Westwood."  
7 Did you say that?

8 A. Yes.

9 Q. Okay. And you were upset that the  
10 businesses were lost. Correct?

11 A. You're saying I was upset. That was a  
12 fact. That wasn't a feeling.

13 Q. I'm asking if you were upset that  
14 businesses were being lost.

15 A. I thought it was sad that businesses  
16 were being taken over, yeah.

17 Q. Right. And you weren't happy about  
18 that. Correct?

19 A. No.

20 Q. I'm sorry?

21 A. No, I was not happy.

22 Q. Okay. That was my question. And you  
23 wanted to try to help those people if you could.  
24 Correct?

25 A. There was no way to help them.

1 Q. No? There was no way to help them?

2 A. Not really, not with only one vote.

3 Q. Well, as of January 1, 2019, you didn't  
4 just have one vote, you had the majority of the  
5 council. So did you want to help those businesses?

6 A. There was no way to help them.

7 Q. Did you explore whether there was a way  
8 to help them?

9 A. There was a contract in place.

10 Q. Did you explore if there was any way to  
11 help them is the question.

12 A. There was no way to help them.

13 Q. I didn't ask you that.

14 A. A contract was in place before I took  
15 office.

16 Q. Did you explore whether there was any  
17 way --

18 A. Why would I explore something that would  
19 have been futile.

20 Q. Then that answers the question. Right?  
21 Then the answer is no, I didn't. Did you explore  
22 ways to try to help them?

23 A. I don't think so.

24 Q. Okay. Did you speak with any of those  
25 business owners as to whether there was any

1 assistance that the town could give?

2 A. I don't remember specifically.

3 Q. Did you try to assist any of these  
4 business owners in connection with maximizing value  
5 in the condemnation for them, trying to get them as  
6 much money as you could?

7 A. No.

8 Q. No, you didn't do that?

9 A. I wouldn't know how to do that.

10 Q. And that wouldn't have been proper for  
11 you to do that anyway. Right?

12 MR. SEAMAN: Objection to form.

13 Q. Did you say yes? I didn't hear you.

14 A. I didn't do it, so there's no reason to  
15 answer any other questions.

16 Q. No, there is a reason to answer 'cause I  
17 asked it. Okay? You don't get to decide what  
18 questions you answer or not. Do you understand  
19 that, Ms. DiPaola? You're the mayor, but you don't  
20 have any greater rights than any other litigant at a  
21 deposition. Do you understand that?

22 A. Yes.

23 Q. So could you now please answer my  
24 question without telling me you don't have to answer  
25 it. Would you like to have it read back?

1           A.       I didn't say I didn't have to answer. I  
2       said what was the use of answering it.

3           Q.       The use is -- well, I'm not going to  
4       tell you what the use is.

5                   MR. FIORENZO: Could you read it back to  
6       the witness?

7                   (The record is read by the reporter.)

8           Q.       Can you answer the question now?

9           A.       Which question?

10          Q.       The question is, you wouldn't have done  
11       that 'cause you knew it wouldn't have been  
12       appropriate to do that. Correct?

13                   MR. SEAMAN: Objection to form.

14          Q.       To try to help these people when there  
15       was a contract with the redeveloper that the town  
16       was going to assist with respect to the  
17       condemnation. You knew it wouldn't be appropriate  
18       to do that. Correct?

19          A.       I guess, yeah.

20          Q.       Okay. All right. Turn if you would,  
21       please, to page 3. So this is again this newspaper  
22       article. It states, Regarding the planned 29  
23       affordable housing units, 22 will be incorporated  
24       into the Emerson Station as three-, two-, and  
25       one-bedroom units. The remaining seven, DiPaola

1 said, will comprise a stand-alone building across  
2 from Dunkin' Donuts. Did you make those statements  
3 at the meeting?

4 A. I don't recall.

5 Q. Is there a piece of property across from  
6 the Dunkin' Donuts that was being discussed for the  
7 siting of the off-site units as you appear to say  
8 here?

9 A. I think there were discussions, but no  
10 decision was made.

11 Q. Okay. There was a Block 610, Lot 1,  
12 where you say there was a discussion but no decision  
13 was made. So there was a discussion among whom  
14 regarding using that site for the off-site units,  
15 who was involved in that discussion?

16 A. I don't remember. I think they might  
17 have come to -- I don't remember.

18 Q. Were you involved in those discussions?

19 A. I don't remember.

20 Q. Did you ever speak to anyone about the  
21 location of the -- well, I mean, obviously you spoke  
22 to someone because the reporter says you were  
23 talking about it at this meeting. So you don't deny  
24 that you discussed it at this meeting that he was  
25 reporting on, do you?

1 A. I honestly don't remember.

2 Q. I know, but you don't deny the accuracy  
3 of the reporting, do you?

4 A. I could have said it, I may not have  
5 said it. I don't know. There's no quotes around  
6 it.

7 Q. So he says you talked about this. You  
8 don't deny that. Right?

9 A. I don't recall.

10 MR. SEAMAN: Objection to form.

11 Q. By the way, those seven off-site units,  
12 what is Emerson's position today about the seven  
13 off-site units?

14 MR. SEAMAN: Objection to form.

15 A. That's in front of a judge right now, I  
16 think.

17 Q. Yeah. No, I know it is. What is  
18 Emerson's position today about the seven off-site  
19 units?

20 A. This is like a closed session matter.

21 Q. No, it's not. I'm asking you questions.  
22 You're the mayor of the town.

23 A. We've only ever discussed it in closed  
24 session.

25 Q. I don't care where you discussed it.

1 I'm asking you if you know what the town's position,  
2 their public position is regarding the seven  
3 off-site units that they've articulated publicly?

4 MR. BOTTA: If you have.

5 A. I don't remember.

6 Q. Oh, they have. I can show you the  
7 positions they've taken in the litigation. Do you  
8 know --

9 A. Okay.

10 Q. -- what the position is that --

11 A. You can show me.

12 Q. Do you know what the position is that  
13 you took -- Emerson took regarding the seven  
14 off-site units?

15 A. If you have something, I'd like to see  
16 it.

17 Q. Do you know what the position of the  
18 Town of Emerson is today regarding the seven  
19 off-site affordable housing units as the mayor of  
20 Emerson?

21 A. You said you could show me and I am  
22 agreeing --

23 Q. No, no, no.

24 A. -- that it would be okay for you to show  
25 me.



1 Q. I'm not going to show you anything until  
2 you answer my question. Do you know?

3 A. I don't remember.

4 Q. So you don't know -- even though we  
5 argued this last week, you don't know what the  
6 position of Emerson is on this topic?

7 A. You argued what last week?

8 Q. Is that your position? Again, you don't  
9 get to ask me questions. You don't know what it is,  
10 Emerson's position on the seven off-site units?

11 A. We've only discussed it in closed  
12 session.

13 Q. Are you aware that that building across  
14 from Dunkin' Donuts, Block 610, Lot 1, which you're  
15 reporting on and the reporter reported on, is the  
16 location that my client -- the tract of land that  
17 they purchased for those seven off-site units, are  
18 you aware of that?

19 A. I know they own it.

20 Q. Right.

21 A. I don't know exactly what they were  
22 doing.

23 Q. Do you know when they bought it?

24 A. No.

25 Q. Okay. And having bought it, are you

1 aware that they've made an application -- they made  
2 an initial application to the Land Use Board to seek  
3 approval of those seven units consistent with the  
4 settlement agreement that was reached, are you aware  
5 that that happened?

6 A. I'm aware that they wrote a motion, I  
7 think, to ask Judge Padovano to grant Judge Carroll  
8 the permission to decide it, and that they told you  
9 that it was out of his purview.

10 Q. You're getting ahead of yourself.

11 A. I don't --

12 Q. So let's take it a step at a time. I'll  
13 get to that, 'cause you're right.

14 Are you aware that initially, my client went  
15 to your Land Use Board and said, as to the seven  
16 units we're required under the settlement agreement,  
17 we need to make sure we provide for the affordables,  
18 here's our application, we want you to approve these  
19 seven off-site units on block 610, Lot 1, which is  
20 the building across from Dunkin' Donuts. Are you  
21 aware that they made an application to the Land Use  
22 Board? That's question number one.

23 A. I don't think they did make an  
24 application. I think they were told that they  
25 should bring it to the governing body.

1 Q. Well, that's step two. You're right.

2 A. And there was no application.

3 Q. You're right, that's step two. They did  
4 make an application, and then they were told, just  
5 as you said, the Land Use Board wouldn't hear it,  
6 that it had to go to the governing body, are you  
7 aware of that?

8 A. Yes.

9 Q. Okay. And the position taken was the  
10 Land Use Board won't hear it, you've got to go to  
11 the governing body, and we have to pass an ordinance  
12 in order to allow it. Do you remember that?

13 A. I don't think that we said we had to do  
14 it. I think we had to consider whether we should do  
15 that.

16 Q. Well, my client -- the Land Use Board  
17 wouldn't hear them because you told them they  
18 couldn't hear the application. Correct?

19 A. Because it didn't conform to the  
20 redevelopment plan --

21 Q. No, I'm not interested in because. Did  
22 you tell --

23 A. -- because there was no commercial on  
24 the bottom level.

25 Q. I'm not interested in the because. I'm

1 interested first in -- we'll get to the because.  
2 First, they were told, you told them the Land Use  
3 Board couldn't hear that application, they have to  
4 come to the governing body. Correct?

5 MR. SEAMAN: You, Mayor DiPaola, told  
6 them personally?

7 Q. Yeah, you, Mayor DiPaola of Emerson, you  
8 told them --

9 MR. SEAMAN: Well --

10 Q. You told the Land Use Board, don't hear  
11 it, make them come to us. Correct?

12 A. No, I didn't say that.

13 Q. But that's what happened. Right? You  
14 just said a moment ago they were told they had to  
15 come to the governing body.

16 A. I think because it was a use variance,  
17 we didn't hear it.

18 Q. I don't care why. It's not relevant.  
19 I'm just asking you to confirm a basic fact, that my  
20 client was told the Land Use Board won't hear it,  
21 you must come to the governing body. True or not?

22 A. I think that happened that way, yeah.

23 Q. Okay. And then after that happened, my  
24 client said, we're not required to come to the  
25 governing body. Do you remember that? There was a

1 dispute about that.

2 A. I don't remember that.

3 Q. And then ultimately my client then made  
4 an application, as you said a moment ago, to the  
5 Special Master. I'm sorry, not the Special Master,  
6 the implementation monitor appointed by Judge  
7 Padovano to try to cut through the delay, and that  
8 was Judge Carroll, and we went to Judge Carroll and  
9 asked him to rule on it. You're aware of that.  
10 Right?

11 A. Yes.

12 Q. And then Judge Carroll determined that  
13 it wasn't within the scope of the order granting him  
14 implementation monitor authority, as a result of  
15 which it went back to Judge Padovano. Correct?

16 A. Uh-hum.

17 Q. Yes. Okay. So here we are now. This  
18 was two thousand and -- okay. And then in  
19 connection with that application before Judge  
20 Carroll, which, by the way, was argued, orally  
21 argued last week by me, okay, and your lawyers. In  
22 that argument and in the position they took, it was  
23 Emerson's position that the site, that site you  
24 referred to back at the meeting a couple years ago,  
25 wasn't suitable and that it shouldn't be approved

1 and it shouldn't be permitted. Are you aware of  
2 that?

3 MR. SEAMAN: I'm going to give you an  
4 instruction. Anything you learned from your lawyers  
5 or anything you learned in closed session is  
6 privileged.

7 Q. Well, I'm going to ask you, are you  
8 aware that's the public position that Emerson has  
9 taken?

10 A. Everything that we've discussed about  
11 these seven units has been in closed session.

12 Q. Oh, yeah, but not everything Emerson has  
13 said about it has been in closed session, 'cause  
14 they were required to and did take a public position  
15 on it, didn't they?

16 MR. SEAMAN: Are you aware of them  
17 taking a public position?

18 A. Yeah, but I might not have read it. I  
19 don't remember. And I don't want to say something  
20 that's considered closed session.

21 MR. SEAMAN: I'm going to give you a  
22 direction right now not to disclose anything that  
23 you learned in closed session, other than what may  
24 be in the minutes of a closed session meeting, and  
25 not to disclose anything that you learned solely

1 through discussions with counsel involved in the  
2 litigation unrelated to this case.

3 THE WITNESS: Okay.

4 MR. SEAMAN: If it came directly from  
5 counsel, don't disclose it.

6 THE WITNESS: Okay.

7 Q. Okay. So as of today then, this piece  
8 of the Mount Laurel obligation, the seven units that  
9 was spoken about years ago and reported on in the  
10 press --

11 MR. SEAMAN: In the undated article,  
12 Joe?

13 MR. FIORENZO: In the undated article.

14 MR. SEAMAN: Thank you.

15 Q. I mean, I'm sure there's a date for it,  
16 but there was no date on the one we showed you. As  
17 of today, Emerson has not approved the seven  
18 off-site units. Is that true?

19 A. There's been no approval for the seven  
20 off-site units, correct.

21 Q. And would you agree that the seven  
22 off-site units were a part of the settlement  
23 agreement that was reached that we went over back in  
24 2017?

25 MR. SEAMAN: Objection to form. Calls

1 for a legal conclusion.

2 A. I'd have to go back and read the  
3 contract again.

4 Q. And would you agree that in addition to  
5 the settlement agreement, the seven off-site units  
6 were part of the Special Master's report to Judge  
7 Padovano?

8 MR. SEAMAN: Objection to form.

9 Q. Would you agree with that?

10 MR. SEAMAN: Calls for a legal  
11 conclusion.

12 A. Can you just ask me that again?

13 Q. Yeah. The seven off-site units were  
14 also part of what was in the Special Master's report  
15 to Judge Padovano. Correct?

16 MR. SEAMAN: Calls for a legal  
17 conclusion.

18 A. Yeah, but it was never written down  
19 where they were going to be, only that there would  
20 be seven off-site units.

21 Q. Well, you knew where it was going to be  
22 all the way back two years ago when you reported it  
23 at the meeting that it was the property across from  
24 the Dunkin' Donuts where the seven units were  
25 supposed to go. Right?



1 MR. SEAMAN: Objection to form.

2 Q. Do you deny making that statement? You  
3 know exactly where it went, which is why  
4 Mr. Klugmann went out and bought the property and  
5 paid for it so he could satisfy that obligation to  
6 the settlement agreement. Are you aware of that?

7 MR. SEAMAN: Objection to form.

8 Q. Are you aware of that?

9 A. I don't know.

10 Q. And all this does -- all this does is  
11 hold up the ability of this project to be completed,  
12 'cause as long as you can string this out and as  
13 long as you now take the position we don't think  
14 that that site is suitable for the seven units, that  
15 create delay. You're aware of that. Correct?

16 MR. SEAMAN: Objection to form.

17 A. I'm not going to agree to that  
18 statement.

19 Q. It doesn't? So here we are two years  
20 later, five years after the settlement agreement,  
21 and my client is trying to place the off-site units,  
22 and he can't get Emerson to cooperate at all, can  
23 he?

24 MR. SEAMAN: Objection to form.

25 Q. In fact, Emerson has taken the position,

1 no, we're not going to agree you can put it there.

2 Right?

3 MR. SEAMAN: Objection to form.

4 Q. Right?

5 A. I'm not agreeing with anything you're  
6 saying.

7 Q. So the public position of Emerson as  
8 staked out before the Court as the developer is  
9 trying to get the other affordable units built,  
10 let's take a look at what your public position is on  
11 that. Okay?

12 A. I can tell you what our public position  
13 is.

14 Q. Oh, good, 'cause I asked you that and  
15 you couldn't tell me before. You want to tell me  
16 now?

17 A. The only part of the public opinion that  
18 I understand is that it does not conform to the  
19 redevelopment plan.

20 Q. Okay. Well, let's see what you stated  
21 publicly, Emerson, formally to the Court in  
22 connection with this request to compel.

23 MR. FIORENZO: Could you put it up?

24 MR. KLEIN: DD-26.

25 MR. FIORENZO: Thank you.

1 Q. Giblin & Gannaio are your attorneys.  
2 Right?

3 A. Yes.

4 Q. Okay. And this is the letter brief they  
5 submitted to the judge in connection with our  
6 efforts to compel us to be able to move ahead to  
7 construct the seven units.

8 MR. FIORENZO: Highlight that, please.

9 Q. So in the papers on behalf of Emerson,  
10 they state the following:

11 "ERUR's entire motion is to enforce a  
12 nonexisting agreement to allow seven units to be  
13 built on 129 Kinderkamack Road. The Court should  
14 see this motion for what it truly is, a last minute  
15 attempt by the redeveloper asking the Court to allow  
16 them to cram seven units on a site that was not  
17 contemplated, suitable, or agreed to, and that would  
18 be detrimental to Emerson residents merely in order  
19 to reduce its own costs and maximize profits."

20 Are you aware that's the public position that  
21 Emerson has taken?

22 MR. SEAMAN: Objection to the form.  
23 Other than what was disclosed to you by counsel.  
24 All right?

25 A. I mean, it says that's a public

1 document. Right?

2 Q. Right. It is. Yes.

3 A. Okay.

4 Q. So that's the public position of  
5 Emerson, that the effort to try to build these seven  
6 affordable units to comply with the settlement  
7 agreement, comply with the Special Master report,  
8 and to comply with Judge Padovano's order, that the  
9 site is not "contemplated, suitable, or agreed to,  
10 and would be detrimental to Emerson." Right?

11 That's your position, meaning Emerson. Right?

12 MR. SEAMAN: Objection to form.

13 A. Yes, that's what it says in the brief.

14 Q. So, again, Emerson is seeking to block  
15 the ability to move forward with the construction on  
16 that site of the seven affordable units 'cause it's  
17 not suitable for the site. Correct?

18 A. I don't think we're trying to block  
19 anything. I think they just need to build something  
20 that conforms with our plan.

21 Q. Did you read the papers filed on behalf  
22 of Emerson?

23 A. I probably perused them.

24 Q. Did you understand that suitability was  
25 the issue, they claimed that this property wasn't

1 suitable for the seven units and therefore shouldn't  
2 be used for that purpose?

3 MR. SEAMAN: Objection to form.

4 Q. Are you aware that that's the position?

5 MR. SEAMAN: Objection to form, calls  
6 for a legal conclusion. You're asking her to  
7 interpret the letter brief?

8 Q. No, I'm asking if she's aware of that  
9 being the position of Emerson as articulated in the  
10 papers filed with the Court.

11 A. In my opinion, they should have -- I  
12 don't know what I should --

13 Q. I'm not asking for your opinion. I'm  
14 asking if you're aware of the public position  
15 Emerson has taken before the Court in response to  
16 the application to compel Emerson to let us build  
17 it.

18 A. I think they should have known what  
19 was -- the redevelopment plan was before they built  
20 something --

21 Q. I really don't care what you think on  
22 that 'cause it's not relevant to the question.  
23 Could you please answer my question now?

24 MR. FIORENZO: Could you read it back to  
25 the witness? She made no effort to answer it.

1 (The record is read by the reporter.)

2 A. Yes, I just read it.

3 Q. Okay. Now, are you aware that the  
4 Special Master, Ms. Lonergan, has submitted papers  
5 to the Court saying this property is suitable for  
6 the seven units and was contemplated to be part of  
7 the development plan, are you aware of that?

8 A. I don't recall.

9 Q. Okay. So would you agree with me that  
10 the consequence of Emerson placing these roadblocks  
11 in the way of having this application for the seven  
12 units approved has resulted in delay to my client?

13 MR. SEAMAN: Objection to form.

14 Q. Would you agree? I mean, it's obvious.  
15 I'm just asking you to --

16 MR. BOTTA: Objection to form.

17 Q. -- confirm the obvious.

18 MR. BOTTA: You're making a statement.

19 A. I don't know how to answer that  
20 question, 'cause there were three statements in it  
21 that you're asking me whether it's true or not that  
22 you're feeding into my mouth.

23 Q. This caused the delay, the fact that  
24 Emerson wouldn't even hear the application before  
25 the Land Use Board. Right?

1 MR. SEAMAN: Objection to form.

2 A. That's your statement.

3 Q. I'm asking you to confirm --

4 A. I don't know.

5 Q. You don't know. Well, let's see, if  
6 they heard it, which was over a year ago, it would  
7 have been heard a long time ago. Right?

8 MR. SEAMAN: Objection to form, calls  
9 for speculation.

10 Q. Do you remember when the application was  
11 made to the Land Use Board to hear it?

12 A. No.

13 Q. Would it surprise you to learn it was  
14 over a year ago?

15 A. I don't think it was actually an  
16 application. I think that they contacted the  
17 secretary to say that they were going to make an  
18 application, they submitted it, but it was never  
19 heard.

20 Q. Right, they submitted it. You're right.  
21 Okay. You don't want to call it an application.  
22 They submitted to the Land Use Board to have them  
23 hear their request to approve the construction of  
24 the affordables, and then the Land Use Board was  
25 told no, don't hear it. Correct?

1 A. I believe so.

2 Q. Okay. And that happened well over a  
3 year ago. Are you aware of that? So now all this  
4 time is just further delay in the project. Right?

5 MR. SEAMAN: Objection to form.

6 A. We're not doing anything to delay them.

7 Q. As to seven units that everyone  
8 acknowledged and agreed could be off-site. Correct?

9 A. Say that again?

10 Q. As to seven units which were always  
11 intended to be off-site. Correct?

12 A. There was always a component in the  
13 agreement that there could be seven off-site --

14 Q. Yeah.

15 A. -- not that there had to be seven  
16 off-site.

17 Q. Okay. Well, the plan that was approved  
18 by your Planning -- your Zoning Board provided for  
19 22 units on-site and seven units off-site. Are you  
20 aware of that?

21 A. I think it said a little bit more than  
22 that. That's not all it said in the agreement.

23 Q. Well, the plan for construction called  
24 for a certain number of units. It only had 22 units  
25 in the plans that were approved by the Planning



1 Board for affordables on-site. Are you aware of  
2 that? The plans that were ultimately approved?

3 A. Yes, but that didn't --

4 Q. Okay. And the seven --

5 A. That doesn't mean that they had to put  
6 the seven on-site.

7 Q. Well, they couldn't put it on that site  
8 'cause they had already gotten approval and have  
9 commenced construction pursuant to an approved plan  
10 for a building for 22 affordable units. So they  
11 can't be on-site, can they?

12 MR. SEAMAN: Objection to form.

13 A. They could be on site if they --

14 Q. How?

15 A. -- just configured the plans and had --

16 Q. No, no, no, no, no.

17 A. -- less market rate units which was  
18 discussed --

19 Q. No, the Planning --

20 A. -- over two to three years ago in a  
21 meeting with you.

22 MR. SEAMAN: Joe, let the witness  
23 answer.

24 Q. The Planning Board approved plans that  
25 called for 22 units of affordable on-site. True?

1           A.       The Planning Board was -- the  
2       application that was presented and approved had 22  
3       on-site.

4           Q.       Okay. So now, that approval has been  
5       given, and the developer has gone forward to  
6       construct in accordance with the approved plans.  
7       True?

8           A.       I guess.

9           Q.       You guess? Do you see the construction?

10          A.       It's going slow.

11          Q.       Whether it's slow or fast, is there  
12       construction going on?

13                 MR. SEAMAN: Objection to form.

14          A.       I guess so.

15          Q.       I wonder why it's going slow, yeah.  
16       You're right, it's going slow. But is the  
17       construction going on in accordance with the  
18       approved plans for 22 on-site units?

19                 MR. SEAMAN: Objection to form.

20          A.       I'm not an inspector.

21          Q.       You don't know?

22          A.       How do I know if it's going as approved.

23          Q.       You don't know that.

24          A.       I assume it is if the inspectors are  
25       doing their job. I don't go out and inspect the

1 property.

2 Q. So that means now -- let's assume that  
3 they're building the project pursuant to the  
4 Planning Board -- to the board resolution with 21  
5 units on-site. Now, there have to be seven more  
6 affordable units pursuant to the settlement  
7 agreement. Right? Correct?

8 A. There has to -- they have to give us 29  
9 units.

10 Q. Right. And so those seven units now  
11 have to be placed somewhere. Right?

12 A. You keep saying they have to be.  
13 Nothing has to be. They could rework their plan and  
14 accommodate the building on-site to include more  
15 affordables.

16 Q. Oh, I see. So they should --

17 A. There would just be less market rate.

18 Q. So in other words, under the  
19 construction activity that's already taken place and  
20 the footprint that's been taken place and all the  
21 building structure and the rooms that have taken  
22 place, they should redo all that, is that what  
23 you're saying?

24 A. I don't even think they've gotten that  
25 far, sir.

1 Q. Is that what you're suggesting, you're  
2 suggesting they go back to the Planning Board  
3 again -- excuse me, Land Use Board again to revise  
4 the site plan?

5 A. I don't -- I don't think it would have  
6 to be changed that much.

7 Q. Unbelievable. Okay.

8 MR. FIORENZO: Yeah, pull that back up.  
9 This is silly, but. Let's go to the epic.

10 MR. KLEIN: This is DD-27.

11 Q. DD-27 are special meeting minutes of the  
12 board, December 10, 2018, of the Land Use Board.

13 So turn to 6, page 6. These are minutes of  
14 the meeting of the board. It states, "Ms. Bogart  
15 clarified the number of apartments required for the  
16 affordable housing element. She said there would be  
17 22 apartments on-site and seven apartments off-site,  
18 which was agreeable to the Court Master."

19 So you were at that meeting. Do you remember  
20 Ms. Bogart testifying there were specific requests  
21 to identify where and how the affordable component  
22 would be satisfied?

23 A. I understand that, but we've had several  
24 conversations with you included as to changing  
25 the --

1 Q. Oh, you mean settlement discussions?

2 A. Yes.

3 Q. Yeah. Well, we're not interested in  
4 that and we can't speak about that 'cause it's  
5 improper under the Rules of Evidence.

6 A. Okay.

7 Q. And I know we did have them and they  
8 were an utter waste of time, I do recall that,  
9 'Cause there's no -- forget it, I'm not going to go  
10 there.

11 But she said there would be 22 apartments  
12 on-site and seven off-site, which was agreeable to  
13 the Court Master. And, in fact, the resolution of  
14 the Planning Board cites that and says you've got to  
15 make sure you comply with that.

16 So does that help refresh your memory that the  
17 Planning Board resolution consistent with the  
18 Special Master report and the settlement agreement  
19 requires seven on-site -- excuse me, 22 on-site and  
20 seven off-site?

21 MR. SEAMAN: Objection to form.

22 A. I see that Ms. Bogart said that.

23 Q. Yeah. And at the Planning Board in the  
24 resolution, they provide for 22 units on-site and  
25 the remainder off-site. Isn't that correct?

1 A. I guess.

2 Q. And that's why in March or April of  
3 2019, my client went out and bought the very  
4 property that you discussed that was reported in the  
5 press across from the Dunkin' Donuts which had been  
6 selected as the site for those seven units.

7 MR. SEAMAN: Objection to form.

8 Q. Are you aware of that?

9 MR. SEAMAN: Objection to form.

10 A. I don't recall.

11 Q. Are you aware that that site was  
12 selected for the seven units even before you became  
13 the mayor?

14 A. No, I was not aware of that.

15 Q. Were you involved in any of those  
16 discussions?

17 A. I don't think so. I don't recall.

18 MR. FIORENZO: Pull that up, too.

19 Q. So here's the resolution. So after all  
20 this testimony, there were questions at the hearing  
21 about the affordable housing. Do you remember that  
22 came up? At the meeting you attended and spoke at,  
23 you spoke about affordable housing?

24 A. I don't recall what was discussed at  
25 that meeting.

1 Q. You don't remember?

2 A. No.

3 Q. Okay. Well, do you remember at that  
4 time the board had asked for some specification as  
5 to the affordable units and how that was going to be  
6 satisfied to make sure -- to make sure that Emerson  
7 would be protected under the settlement agreement,  
8 do you remember that?

9 A. I don't remember that, but.

10 MR. FIORENZO: Okay. Could you pull up  
11 that paragraph, please.

12 Q. DD-22.

13 MR. FIORENZO: What paragraph?

14 MR. KLEIN: G.

15 MR. FIORENZO: G. Turn to that. It's  
16 not moving.

17 MR. KLEIN: There we go.

18 MR. FIORENZO: What happened to this new  
19 software, it's supposed to be so good.

20 Q. So one of the approval findings is that,  
21 "The settlement agreement," you're aware that's the  
22 settlement agreement we went over before. Right?

23 A. Uh-hum.

24 Q. The town settled the lawsuit?

25 A. Yes.

1           Q.       "Requires 29 COAH or affordable units,  
2       seven of which may be provided off-site. The  
3       project will have 147 residential units, including  
4       22 COAH or affordable units, and applicant will  
5       comply," will comply, "with the seven off-site  
6       affordable housing requirements."

7           So the condition of the resolution was that  
8       the applicant, my client, will comply with the seven  
9       off-site affordables. And that's what it's been  
10      trying to do for a couple of years now, with the  
11      town taking the position, oh, no, that's not a  
12      suitable site, you can't do it. True?

13                 MR. SEAMAN: Objection to form.

14           A.       I guess they should have built -- bought  
15      a piece of property that it was suitable to build.

16           Q.       Well, the Master said it was suitable.  
17      The Court said it was suitable. Who says it's not,  
18      you? Do you say it's not suitable?

19           A.       Our redevelopment plan, it doesn't  
20      comply with it.

21           Q.       Your brief said it's not suitable, which  
22      is why you're telling the Court that we shouldn't be  
23      allowed to build those seven units. So the  
24      position --

25           A.       Excuse me, can I ask my lawyer a



1 question?

2 Q. No, no, you can't. No, you can't.

3 A. To form?

4 Q. No.

5 A. Am I here to litigate the seven -- it  
6 sounds like we're litigating the seven off-site  
7 units, which I didn't think I was here to do.

8 Q. Well, it doesn't matter what you think.  
9 You don't get to speak to them in the middle of my  
10 examination. I'm asking you questions about the  
11 actions of Emerson and you that had the effect of  
12 impeding my client in its development and  
13 construction. And my client --

14 A. We are not trying to impede.

15 Q. Yeah, I know that. And my client who's  
16 been now waiting over two years to try to build  
17 these seven other units has been met with resistance  
18 at every step of the way, including two weeks ago  
19 when Emerson said publicly the site isn't suitable,  
20 even though it's required by the Planning Board,  
21 even though the Court said it's required to be done,  
22 and even though it's the only site that has ever  
23 been identified by anyone to satisfy the seven  
24 units. Are you aware of that?

25 MR. BOTTA: Was that your argument last

1 week? 'Cause that sounds like it.

2 Q. Are you aware of that --

3 MR. BOTTA: Objection to the form of the  
4 question.

5 Q. -- that Emerson has never, ever  
6 identified another site for those seven units?

7 MR. SEAMAN: Objection to the form.

8 A. That's not true.

9 Q. Oh, it is true, because it was true  
10 during oral argument, the Judge asked about that,  
11 and Emerson never identified a site. There's  
12 nothing that has ever occurred to identify a site  
13 where those seven other units can go, and that's the  
14 reason why prior to you coming on, there were  
15 discussions, and there's written communications on  
16 all of this, identifying Block 610, Lot 1 as the  
17 site to put the seven units, and it's only after you  
18 became mayor that now it's been blocked, after my  
19 client spent hundreds of thousands of dollars to  
20 acquire the site to meet that obligation. Are you  
21 aware of that?

22 MR. SEAMAN: Objection to the form.

23 A. I don't recall.

24 Q. Do you think that's right that my client  
25 has been strung out after he bought that property

1 and reliance on the property having been identified,  
2 only today to find you and the town saying, oh, no,  
3 no, it shouldn't go on the site 'cause it's not  
4 suitable.

5 MR. SEAMAN: Objection to form.

6 Q. Do you think that's fair?

7 MR. SEAMAN: Objection to form.

8 Q. Is that fair?

9 MR. BOTTA: Objection to form.

10 A. I don't know. I'm not --

11 Q. You don't know. Okay. I know.

12 A. You're grandstanding. You're giving a  
13 lot of statements.

14 Q. No, I'm --

15 A. There's too many statements in there --

16 Q. No, I'm asking you questions --

17 A. -- and I'm not --

18 Q. -- to see if you're able to answer them.

19 A. -- not going to agree to is that fair  
20 after you make five statements and you're  
21 grandstanding.

22 Q. I'm trying to find out if there's any  
23 explanation for how this behavior can be explained,  
24 because to me it seems inexplicable, and the Judge  
25 raised some serious questions about it.

1           So the bottom line is this. As to those seven  
2 off-site units, would you agree with me as of today,  
3 you, as the mayor of Emerson, have never  
4 communicated in writing anything to the redeveloper  
5 saying, we don't want it in the property across from  
6 the Dunkin' Donuts that I talked about two years  
7 ago, put the seven units at this site, you've never  
8 done that, have you?

9           MR. SEAMAN: Objection to form.

10          A. I don't know.

11          Q. And Emerson has never submitted anything  
12 in writing, including in connection with the motion  
13 we just had saying to the Court, you know, this  
14 isn't suitable, but here's something in this,  
15 they've never done that.

16          A. I don't know.

17          Q. So if this isn't suitable, let's pretend  
18 for a moment you're right, if this isn't suitable,  
19 now you have 22 affordable units and the settlement  
20 agreement requires 29. And under the order of the  
21 Judge, you, Emerson, were required to report to the  
22 Judge --

23          A. Can you just --

24          Q. -- two years ago --

25          A. He's screaming at me.

1 Q. -- whether and how you were going to  
2 satisfy your affordable obligation. So you haven't  
3 come up with any other alternative at all, have you?

4 MR. SEAMAN: Objection to form.

5 Q. Have you?

6 A. I don't know.

7 Q. So as the Judge said, what I thought  
8 was --

9 A. I thought that we did.

10 Q. I thought the most poignant --

11 A. You're saying that we didn't.

12 Q. I thought the most poignant question  
13 was, well, if it's not going to be here at this  
14 site, which appeared to have been vetted and agreed  
15 upon --

16 A. By who?

17 Q. By Emerson and its representatives  
18 before you. Okay? If not here, then where,  
19 Emerson, should it go, because otherwise, Emerson,  
20 you're in violation of the settlement agreement,  
21 you're in violation of the conditional judgment of  
22 repose, and maybe you're stripped, stripped of any  
23 protection you have for noncompliance with your  
24 Mount Laurel obligation. Do you have an answer for  
25 the Judge's question on that?

1 MR. SEAMAN: Objection.

2 A. Everything that --

3 MR. SEAMAN: Hold on, Danielle. You're  
4 quoting the Judge. You don't have a copy of the  
5 transcript.

6 MR. FIORENZO: So?

7 MR. SEAMAN: I don't think it's her  
8 obligation to answer the Judge's question.

9 MR. FIORENZO: Well, you object to the  
10 form, that's fine.

11 MR. SEAMAN: She asked --

12 MR. FIORENZO: You can object to the  
13 form. That's perfectly fine.

14 MR. SEAMAN: I'm objecting to the form.

15 MR. FIORENZO: That's fine. I'm going  
16 to stay with my question. I like it.

17 MR. SEAMAN: And to the extent that  
18 anything that you would know to answer that question  
19 would come from counsel and come from information  
20 from counsel --

21 THE WITNESS: Correct.

22 MR. SEAMAN: -- I'm going to tell you  
23 not to disclose anything that would come from  
24 counsel or on advice of counsel.

25 Q. I'm not asking for anything having to do

1 with counsel. I'm asking for this witness to tell  
2 me if she's able to answer this simple question, if  
3 it is not at that location that was identified by  
4 the prior administration, that my client bought and  
5 paid for for that purpose, and if we pretend you're  
6 right that it's not suitable, even though the Master  
7 says it, then Emerson would be out of compliance  
8 with the settlement agreement. Do you understand  
9 that?

10 MR. SEAMAN: Objection to the form,  
11 calls for speculation, it's a hypothetical.

12 Q. Do you understand that?

13 MR. SEAMAN: Same objection.

14 A. I don't -- there's so many different  
15 statements and questions intertwined --

16 Q. Just answer the question, ma'am.

17 A. -- with what you're saying.

18 Q. Just answer the question.

19 A. Which question?

20 Q. You keep saying that to avoid answering  
21 the question.

22 MR. SEAMAN: Objection.

23 A. No, you just talk for like thirty  
24 seconds and then say answer the question and I don't  
25 know where the question is anymore.

1 Q. I'll have it read back to you. Listen  
2 to it and then answer it, please.

3 (The record is read by the reporter.)

4 MR. SEAMAN: Objection to --

5 A. There were two or three questions.

6 MR. SEAMAN: Hold on, hold on.

7 Objection to the form, that's a hypothetical, calls  
8 for speculation, calls for a legal conclusion.

9 MR. FIORENZO: All right. That's fine.  
10 I think it's a proper question.

11 Q. You can answer.

12 MR. BOTTA: Are you asking where the  
13 other site is or if she knows it's out of  
14 compliance?

15 A. Right.

16 Q. No, I'm asking -- the question that I  
17 asked stands.

18 MR. BOTTA: If you can understand it.

19 A. I don't understand your question.

20 Q. Okay. Well, if you don't -- if we  
21 accept the Emerson position that the site is not  
22 suitable that my client bought and now it can't go  
23 there, do you understand that puts Emerson in a  
24 position where it's in breach of the settlement  
25 agreement?



1 MR. SEAMAN: Objection to the form.

2 Q. And you could be stripped of your  
3 protection?

4 MR. SEAMAN: Objection to the form,  
5 calls for a legal conclusion.

6 A. I'd have to ask my attorney.

7 Q. So you don't know?

8 A. I don't know.

9 Q. Okay. So this whole process on the  
10 affordable, before Emerson took the position that it  
11 did that -- and you reiterated it here today that  
12 it's not suitable, that's your position, right, it's  
13 not suitable?

14 A. Well, that's what I read that you said.

15 Q. Well, that's what the Court was told by  
16 Emerson in their brief, yeah.

17 A. Right, but I was also reading what you  
18 put on the board that it said it wasn't suitable.

19 Q. That was Emerson's position.

20 A. Yes, and I was agreeing with it.

21 Q. Yeah, yeah.

22 A. I read it.

23 Q. And you agree with that. Right?

24 MR. SEAMAN: Objection.

25 A. Yeah, I agree with it.

1 Q. Okay. Great. So have you asked as the  
2 mayor anyone to undertake an analysis, a land  
3 analysis in Emerson to determine if there are any  
4 other sites that meet the COAH criteria of  
5 suitability and viability to propose an alternative  
6 site for the seven units, have you asked anyone to  
7 do that?

8 A. Me personally?

9 Q. Yes, you.

10 A. Me personally, no. The governing body  
11 may have.

12 Q. Did the governing -- anything could --  
13 may have is meaningless. Has the governing body  
14 asked someone to do that analysis, to your  
15 knowledge?

16 A. It's closed session.

17 Q. Don't give me that it's closed session.  
18 Have you done it or not? Did you do it in closed  
19 session?

20 MR. SEAMAN: Don't disclose anything in  
21 closed session.

22 Q. Okay. Are you aware of whether the  
23 governing body has ever requested someone to do that  
24 analysis?

25 A. It's in closed session. I'd have to ask

1 the attorney.

2 Q. Has it been done?

3 A. I'd have to ask our attorneys if I can  
4 even answer that.

5 Q. Well, how about in public session, has  
6 it ever been done?

7 A. I don't think we've taken a vote on  
8 anything at a meeting.

9 Q. Has the topic every come up in public  
10 session?

11 A. I don't think so.

12 Q. Has anyone ever spoken to one of your  
13 professionals to begin the process of undertaking  
14 that analysis?

15 A. I don't recall.

16 Q. Why not?

17 MR. SEAMAN: Objection.

18 Q. If you claim it's not suitable, why  
19 wouldn't you do that?

20 MR. SEAMAN: Objection, calls for  
21 speculation.

22 Q. So you could try to comply with the  
23 settlement agreement, why wouldn't you do it?

24 A. I don't have an answer.

25 Q. I didn't think you would. Okay.

1 MR. SEAMAN: Objection, argumentative.

2 Q. So after -- so are you aware that after  
3 the approval was obtained -- well, actually, let me  
4 withdraw that.

5 So during the course of your campaigning for  
6 mayor, did you -- you spoke to a number of people in  
7 town I take it?

8 MR. SEAMAN: Can you fix the campaign,  
9 first term or --

10 MR. FIORENZO: Yeah, when she was  
11 elected the mayor in 2018.

12 MR. SEAMAN: Thank you.

13 MR. FIORENZO: Prior to the election in  
14 2018.

15 Q. Were you -- did you speak to people in  
16 town as you went about trying to campaign?

17 A. Yeah, I speak to people every day.

18 Q. And did you, for example, go door to  
19 door knocking on doors to talk to people about  
20 trying to support you?

21 A. When?

22 Q. Prior to your election in 2018.

23 A. Yes.

24 Q. And in doing so, did you -- during the  
25 course of those engagements with the electorate, did

1 you convey to anyone that this development project  
2 shouldn't move forward, the 419 project, the one you  
3 described as the centerpiece of your campaign, that  
4 there should be -- this project shouldn't be  
5 approved and that you had a concern about who would  
6 be moving into town as a result of this development  
7 approval, did you convey that to anyone?

8 A. No.

9 Q. Did you state to anyone that it may  
10 bring in a certain element, including religious Jews  
11 into town?

12 A. Absolutely not.

13 Q. Did you ever make a statement -- do you  
14 know a Ken Dzikowski?

15 A. Ken who?

16 Q. Dzikowski?

17 A. No, I don't.

18 Q. Do you know --

19 A. Can you spell that last name?

20 Q. Yeah. D-Z-I-K-O-W-S-K-I.

21 Who is Michael DeOrion?

22 A. A resident of Emerson.

23 Q. And did he run with you in this last  
24 cycle?

25 A. Run with me? No. He's a Democrat.

1 Q. Oh, okay. Did you appear anywhere with  
2 him?

3 A. No.

4 Q. Okay. Did you ever have any  
5 communications with him regarding the 419  
6 development project?

7 A. Not to my knowledge.

8 Q. Do you know a Kate Stutzel?

9 A. Yeah.

10 Q. Who is she?

11 A. Resident of Emerson.

12 Q. Did she run for any office?

13 A. She did.

14 Q. What office was that?

15 A. She ran for council I think two years  
16 ago, three years ago maybe.

17 Q. So not the past cycle, the one before  
18 that?

19 A. I think it was even the cycle before  
20 that.

21 Q. Okay.

22 A. Well, there's this cycle, the last  
23 cycle, it was the cycle before that.

24 Q. Did you ever bring up the topic in these  
25 campaign ventures that you went on about the

1 possibility of the development resulting in Hasidic  
2 Jews coming into town?

3 A. Never.

4 Q. You never mentioned Hasidic Jews at all?

5 A. Never.

6 Q. You never expressed to anyone that the  
7 project was owned by Jewish individuals?

8 A. Never.

9 Q. So if someone said you did, they would  
10 not be telling the truth?

11 A. They would be lying.

12 Q. Okay. Do you know why someone would lie  
13 about that?

14 MR. SEAMAN: Objection to form, calls  
15 for speculation.

16 A. Do I answer it?

17 Q. Yeah.

18 MR. SEAMAN: To the best of your  
19 ability.

20 A. I have no idea why anyone would say  
21 that, except to make me look bad.

22 Q. Did you -- do you remember there came a  
23 time when there was a condemnation that was  
24 requested by the town for you to institute?

25 A. There was a condemnation?

1 Q. Yeah. The developer asked the town to  
2 initiate a condemnation. Do you recall that? As to  
3 one of the people that they couldn't negotiate an  
4 agreement with?

5 A. Vaguely.

6 Q. Who was it?

7 A. I think it was the cleaners and the  
8 liquor store building.

9 Q. Did you speak to them at all, the  
10 cleaners or the liquor store or anyone affiliated  
11 with them?

12 A. Did I speak to them?

13 Q. Yeah, did you speak to them about the  
14 condemnation?

15 A. I don't remember.

16 Q. Did they ever contact you to see if you  
17 could help them --

18 A. I don't --

19 Q. -- with respect to the condemnation?

20 A. I don't remember.

21 Q. So by I don't remember, you're not  
22 denying it happened, you're saying you don't recall  
23 either way?

24 A. I don't recall.

25 MR. KLEIN: This will be DD-28.



1 Q. Okay. DD-28 is a regular meeting  
2 December 18, 2018.

3 MR. FIORENZO: Could you scroll to  
4 the -- yeah, right there.

5 Q. It states here in these minutes that,  
6 Mr. Doyle updated the governing body on negotiations  
7 which had taken place between JMF and the property  
8 owners of Block 419. Because they paid  
9 significantly more for the properties than  
10 originally planned, as well as the need to close  
11 quickly, JMF had to bring in a partner. The third  
12 amendment to the redevelopment agreement would  
13 provide Accurate Builders and Developers with a  
14 51 percent partnership to JMF's 49 percent.

15 Mr. Doyle said that this amendment was not  
16 unreasonable and that bringing in Accurate Builders  
17 would enable the developers to close and allow  
18 Emerson to comply with its commitment. The  
19 governing body requested an addendum to the third  
20 amendment to the redevelopment agreement, require  
21 the builders to meet and work with a subcommittee of  
22 the governing body members, which included the  
23 Mayor-Elect DiPaola, so it will look like what they  
24 wanted for the Borough and what residents would be  
25 pleased with.

1 Jack Klugmann, Chaim Klugmann, and Joseph  
2 Forgione's attorney Peter Flannery of Bisgaier Hoff  
3 were invited into closed session to discuss, and  
4 then Klugmann and others left and agreed to a  
5 subcommittee to review and provide input for the  
6 plan.

7 So do you remember that you brought up the  
8 desire to create such a subcommittee?

9 A. Yes.

10 Q. And that when the third amendment was  
11 being discussed, you said that you would accept and  
12 agree to it if such a subcommittee was created.  
13 Correct?

14 MR. SEAMAN: Objection to form.

15 A. I don't know that I said that I would  
16 agree to it if the subcommittee was formed, but I  
17 asked for the subcommittee because the plan looked  
18 very different than what was originally proposed.

19 Q. Right, the plan that was approved.

20 A. Yeah.

21 Q. And you didn't like the way it looked  
22 aesthetically.

23 A. Aesthetically, yeah.

24 Q. So did you vote in favor or against the  
25 third amendment?

1 MR. SEAMAN: Objection to form.

2 A. I abstained.

3 Q. So as a result of that, the third  
4 amendment was approved. Correct?

5 A. The third amendment was approved, yeah.

6 Q. Did you create the subcommittee?

7 A. Yes.

8 Q. When did you create the subcommittee?

9 A. Probably after I took office or maybe  
10 right there. I don't recall.

11 Q. So you don't know when you created it?

12 A. I don't remember. I don't think -- I  
13 don't know if I created it. I don't think I had the  
14 power to create it until after I was mayor. I don't  
15 remember.

16 Q. I show you what we're going to mark as  
17 DD?

18 MR. KLEIN: 29.

19 Q. 29. And these are notes. 3/14/19.  
20 R-E-D-E-V, it looks like redevelopment abbreviation.

21 A. Can you make that larger if we're going  
22 to read it?

23 Q. So was this a -- was this -- these notes  
24 of a meeting of your redevelopment committee?

25 A. Mayor Gerry -- I don't know what they

1 are.

2 Q. Who's GF?

3 A. I can only guess that it's Gerry  
4 Falotico.

5 Q. Okay. R. Malagiere. Who's JMC?

6 MR. SEAMAN: Objection to the form. Can  
7 we have some foundation whether she even recognizes  
8 the handwriting on this document?

9 A. I don't know who wrote that.

10 Q. Okay.

11 MR. FIORENZO: Is this part of the  
12 document?

13 MR. KLEIN: Yes.

14 Q. Okay. This is part of the same exhibit.  
15 It's a sign-in sheet. So Gerald Falotico, Council  
16 President, Rich Malagiere, you, Jack Klugmann, Jeff  
17 Wieboldt, Accurate Builders, two attorneys from  
18 Porzio Bromberg, Mr. McCann and Mr. Sheola. Right?  
19 So all these people were present at this meeting,  
20 redevelopment meeting in Borough Hall. Do you  
21 remember the meeting?

22 A. No.

23 MR. FIORENZO: Go back to the notes.

24 Q. So the developer -- redeveloper  
25 Mr. Klugmann had been trying to set up a meeting for

1 some time prior to March. Are you aware of that?

2 MR. SEAMAN: Objection to form.

3 A. No.

4 Q. I won't bore you with the details, but  
5 there's a series of e-mail communications starting  
6 in February, late January when he's trying to meet,  
7 and eventually the town -- the town finally agreed  
8 to meet by March 14, 2019. Do you remember being  
9 ill around that time?

10 A. I couldn't remember being ill back then.

11 Q. Okay. In any event, this is a meeting,  
12 and at the meeting there's several things being  
13 discussed. It first says, Mayor's subcommittee to  
14 be appointed 3/19. Developer will meet as soon as  
15 possible with committee. So when did you appoint  
16 people to the subcommittee?

17 A. I don't know. I guess sometime after  
18 3/19 according to that.

19 Q. Did you appoint them by 3/19?

20 A. I don't recall.

21 Q. Who did you appoint to the subcommittee?

22 A. I don't recall.

23 Q. Were you on it?

24 A. I generally sit on all committees.

25 Q. Okay. So the answer would be yes, you

1 were on it?

2 A. Yeah, I guess so.

3 Q. Okay. There's also notes regarding the  
4 emergency building, Section 4.04.

5 MR. FIORENZO: Could you pull that up?

6 Q. So --

7 A. Excuse me, do you know whose notes these  
8 are?

9 Q. I don't. Are they yours?

10 A. No. I don't recognize the handwriting.

11 Q. Well, we'll find out eventually, I  
12 suppose.

13 So there's a note there and it says MC. Is  
14 that Mr. McCann?

15 A. I don't even know who wrote these notes,  
16 so I don't know.

17 Q. I didn't ask that though. Do you  
18 believe that that relates to Mr. McCann?

19 MR. SEAMAN: Objection to form.

20 A. I think it could mean him, but I don't  
21 know.

22 Q. It would appear to be the only person on  
23 the sign-in sheet who those initials relate to, so.

24 There's also an RS, which appears to relate to  
25 the only person with those initials is Richard

1 Sheola, the interim borough administrator. Correct?

2 MR. SEAMAN: Objection to form.

3 Q. Right? That's RS, Mr. Sheola?

4 A. Do I agree with your assumption?

5 Q. Yes. Since he's the only one on the  
6 sign-in sheet --

7 A. It appears that you're correct.

8 Q. Okay. There was a discussion at that  
9 meeting about the emergency building. Do you see  
10 that?

11 A. I see emer -- I don't know what that  
12 says. Emerg, E-M-E-R-G, I don't know what that  
13 says.

14 Q. Was there a provision in Section 4.04(E)  
15 of the agreement that dealt with the emergency  
16 services building?

17 A. Yes.

18 Q. Okay. And the notes here indicate,  
19 Identify property. Was there a discussion about the  
20 need to identify the property?

21 A. I don't recall what happened in 2018.

22 Q. Okay. So you have no recollection of  
23 that being discussed at the meeting?

24 A. I don't.

25 Q. There's a note in here about plans. Do

1 you know what was discussed, if anything, about any  
2 obligations to prepare plans?

3 A. I don't have any recollection.

4 Q. Again, I'm talking about at this  
5 meeting. You don't remember?

6 A. I don't have any recollection.

7 Q. So it would be fair to say you don't  
8 remember what anybody said at this meeting, what you  
9 said, they said?

10 A. I don't even remember where this meeting  
11 was or who --

12 Q. I didn't ask where. Do you remember  
13 anything that anyone said at the meeting?

14 A. I don't -- I don't know.

15 Q. Well, what does that mean. Do you  
16 remember what anyone said at the meeting or not?

17 A. I'm trying to figure out where the  
18 meeting was so I can put myself in the room --

19 Q. Okay.

20 A. -- and remember if anyone said anything.

21 Q. Well, take your time and try to put  
22 yourself in the room. Do you remember what anyone  
23 said at the meeting?

24 A. Can I look at the rest of the note?

25 Q. That's it.



1 MR. FIORENZO: Oh, okay. Well, go back,  
2 she wants to look at it. Go back to the earlier  
3 part if she wants.

4 A. I don't remember. So what was the date  
5 of this meeting?

6 Q. 3/14/19?

7 A. 3/14/19. Can you make that a little  
8 bigger?

9 MR. KLEIN: Which part?

10 A. Any of it. I see -- is that Joe -- oh,  
11 Pappas.

12 Q. Paparo.

13 A. Oh, Paparo.

14 Q. He's an attorney from Porzio Bromberg.  
15 There's a note there, closing all  
16 simultaneous. Do you remember there being  
17 discussion there about how the developer was moving  
18 forward to close and purchase property?

19 A. I honestly don't remember this meeting.

20 Q. Okay. So going back to my question, you  
21 don't remember anything being discussed at this  
22 meeting?

23 A. I don't remember the meeting.

24 Q. Okay. So as a result of that, would it  
25 be accurate to say you do not recall anything that

1 may have been discussed at the meeting since you  
2 don't recall the meeting at all?

3 A. If you ask me a question about something  
4 being discussed, it could jog my memory, but right  
5 now, out of the blue, I don't recall anything  
6 discussed at the meeting.

7 Q. Well, I'm asking you if you can recall.  
8 The notes are here. You can look at those.

9 A. I can't read the handwriting.

10 Q. You can't read it?

11 A. I can't. I can see the word evac.

12 Q. It says Cork & Keg, evac closing 3/22.  
13 So let me read it for you. These are all notes  
14 someone took of the meeting. JMMC, he talks about  
15 the Cork & Keg case. There's a comment,  
16 Condemnation should not be part of the conversation.  
17 Cork & Keg. Evac closing 3/22. Maybe others at the  
18 last minute. Borough asked for communication  
19 through attorneys. JK, Klugmann, as long as treated  
20 fairly will work with others. Works well with  
21 others mayors -- with other mayors. Evac by 6:30.  
22 So does any of this refresh your memory about  
23 anything discussed at the meeting?

24 A. No, and everything you said to me  
25 doesn't make any sense at all. It sounds like

1 gibberish.

2 Q. Okay. So whoever wrote the notes was  
3 writing in gibberish, I guess.

4 A. Didn't take good notes --

5 Q. Yeah.

6 A. -- because it doesn't mean anything to  
7 me.

8 Q. I mean, they're talking about different  
9 topics. Topics.

10 A. Yeah, but I can't -- I can't -- I don't  
11 know what the word is. I don't know what they were  
12 trying to say. I see words, I don't see complete  
13 thoughts.

14 Q. Yeah, a lot of times that happens with  
15 notes. Right?

16 Okay. So in any event, you don't remember  
17 anything discussed at the meeting. Correct?

18 MR. SEAMAN: Objection to form.

19 Q. Is that correct, yes or no?

20 A. I don't remember anything.

21 Q. Okay.

22 MR. FIORENZO: All right. Off the  
23 record.

24 (Discussion off the record.)

25 (Deposition adjourned at 4:36 p.m.)

J U R A T

I DO HEREBY CERTIFY that I have read  
the foregoing transcript of my deposition testimony  
and I certify that it is true and correct to the  
best of my knowledge.

\_\_\_\_\_  
DANIELLE DI PAOLA

SWORN AND SUBSCRIBED

BEFORE ME ON THIS \_\_\_\_\_

DAY OF \_\_\_\_\_ 2023

\_\_\_\_\_  
Notary Public of the State of

CERTIFICATE

I, MARY ANN ADAMS, a Certified Court Reporter and Notary Public of the State of New Jersey, License No. X101026, do hereby certify that prior to the commencement of the examination, DANIELLE DI PAOLA was duly sworn by me to testify as to the truth, the whole truth, and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

*Mary Ann Adams, C.C.R.*

Notary Public of the State of New Jersey

My Commission expires August 10, 2024

ERRATA SHEET  
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: Emerson Redevelopers Urban Renewal, L.P.C. v. The Boro  
Of Emerson New Jersey, And Danielle Dipaola

DATE OF DEPOSITION: 4/26/2023

WITNESSES' NAME: Danielle Dipaola

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\_\_\_\_\_  
Danielle Dipaola

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(NOTARY PUBLIC)

\_\_\_\_\_  
MY COMMISSION EXPIRES:

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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